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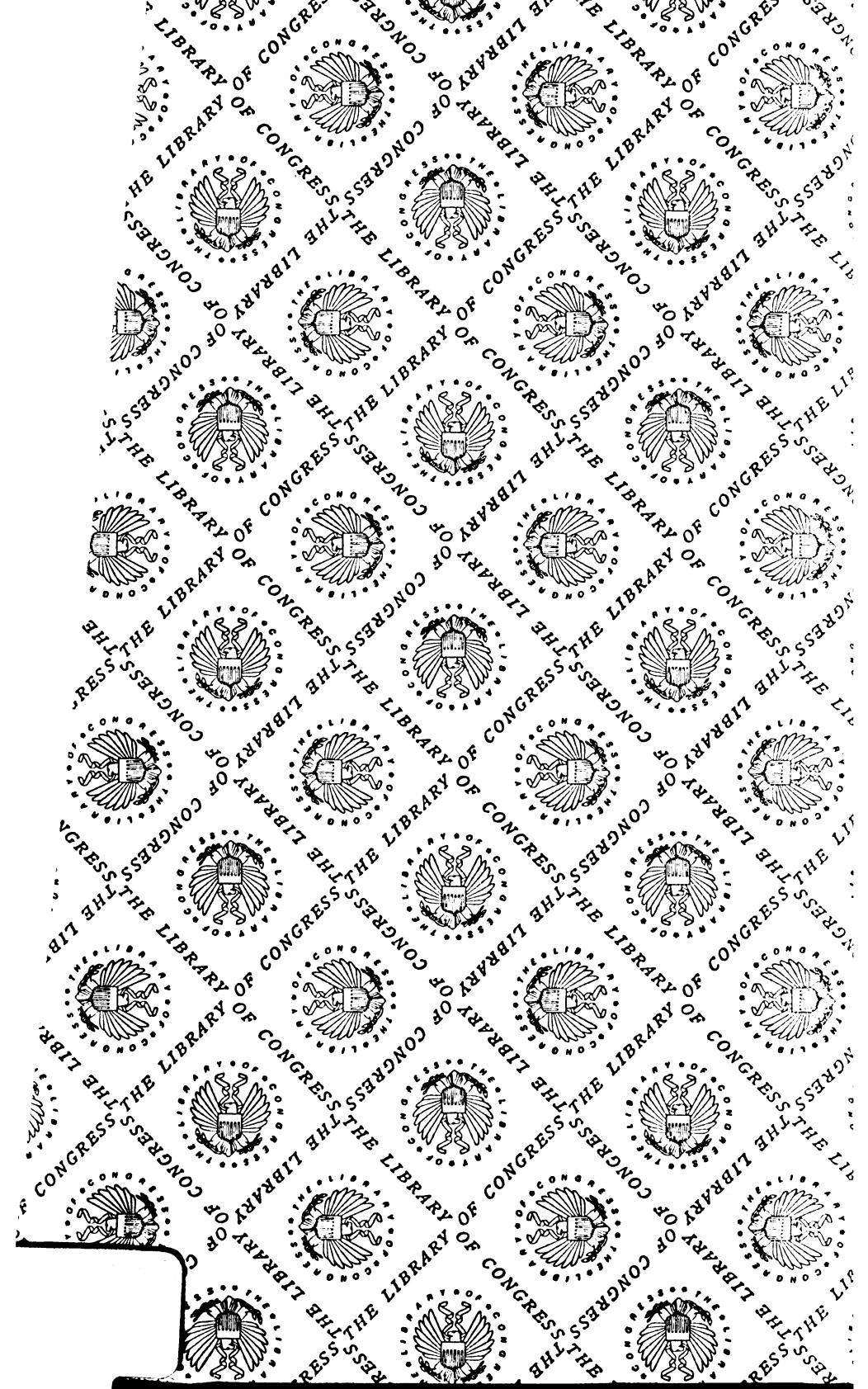
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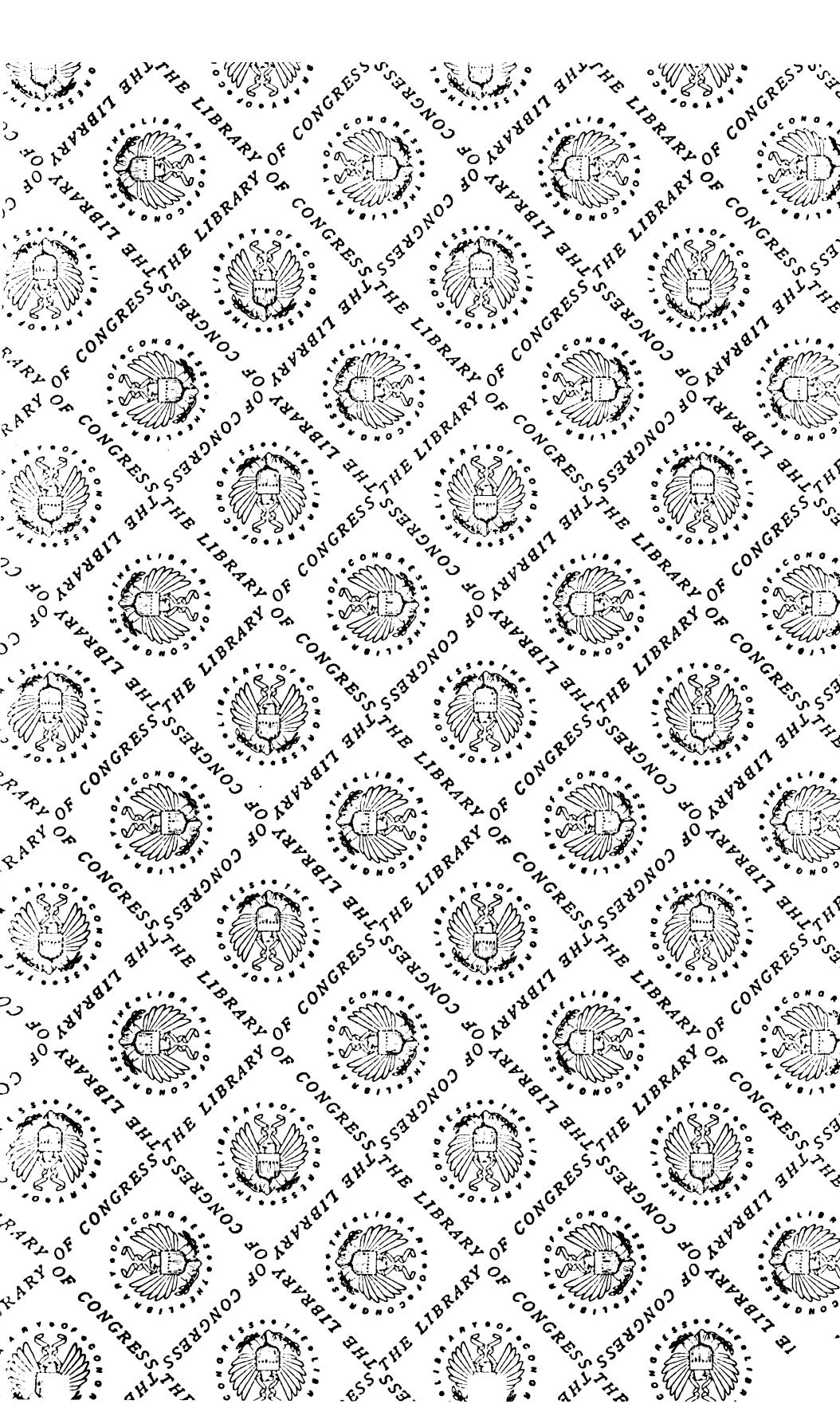
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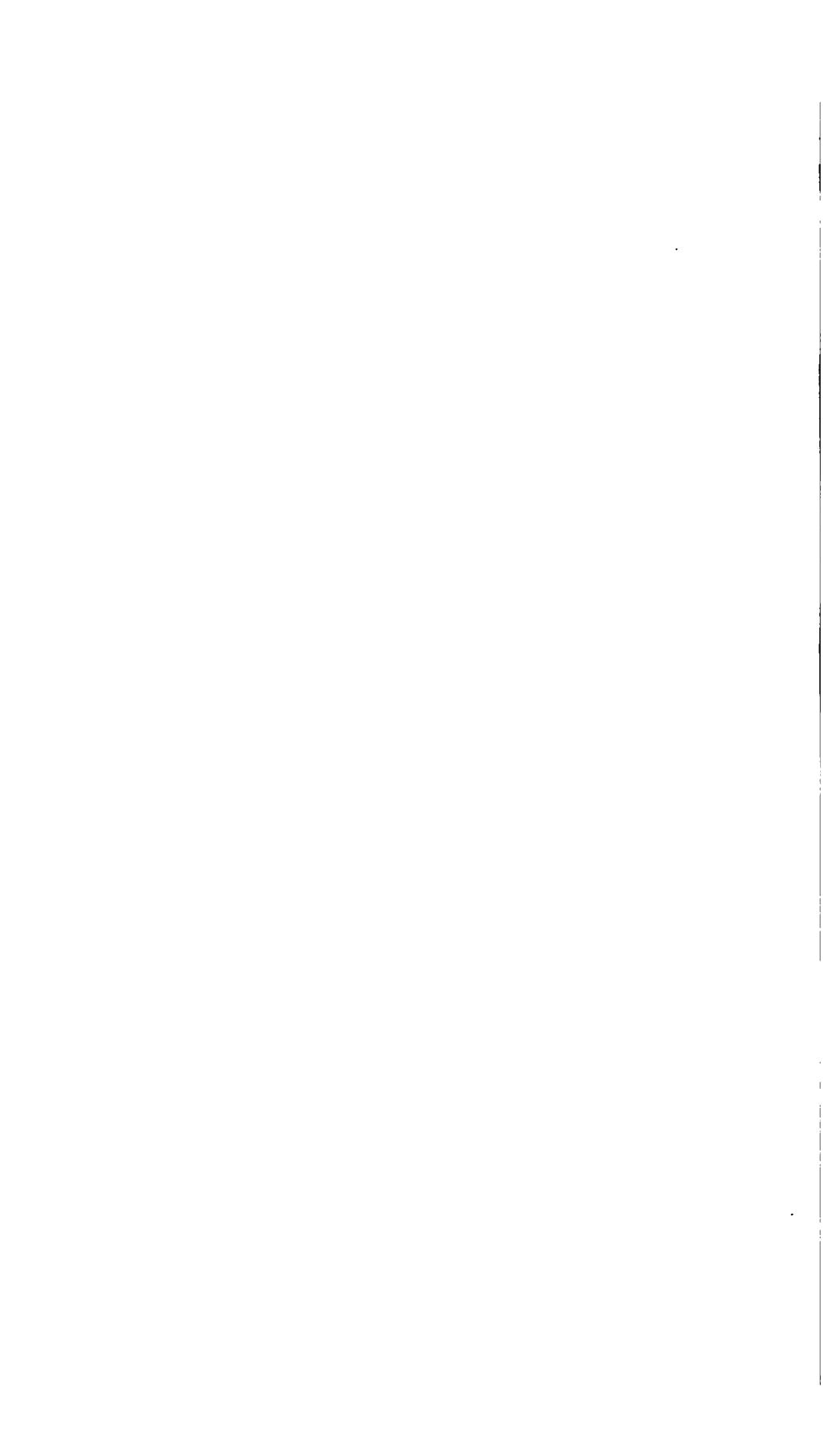
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HEPBURN-DOLLIVER BILL.

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BEFORE THE

COMMITTEE ON THE JUDICIARY

OF THE

HOUSE OF REPRESENTATIVES

ON THE

BILL (H. R. 4072) ENTITLED "A BILL TO LIMIT THE EFFECT OF THE
REGULATIONS OF COMMERCE BETWEEN THE SEVERAL STATES
AND WITH FOREIGN COUNTRIES IN CERTAIN CASES."

COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES OF THE UNITED STATES,
FIFTY-EIGHTH CONGRESS.

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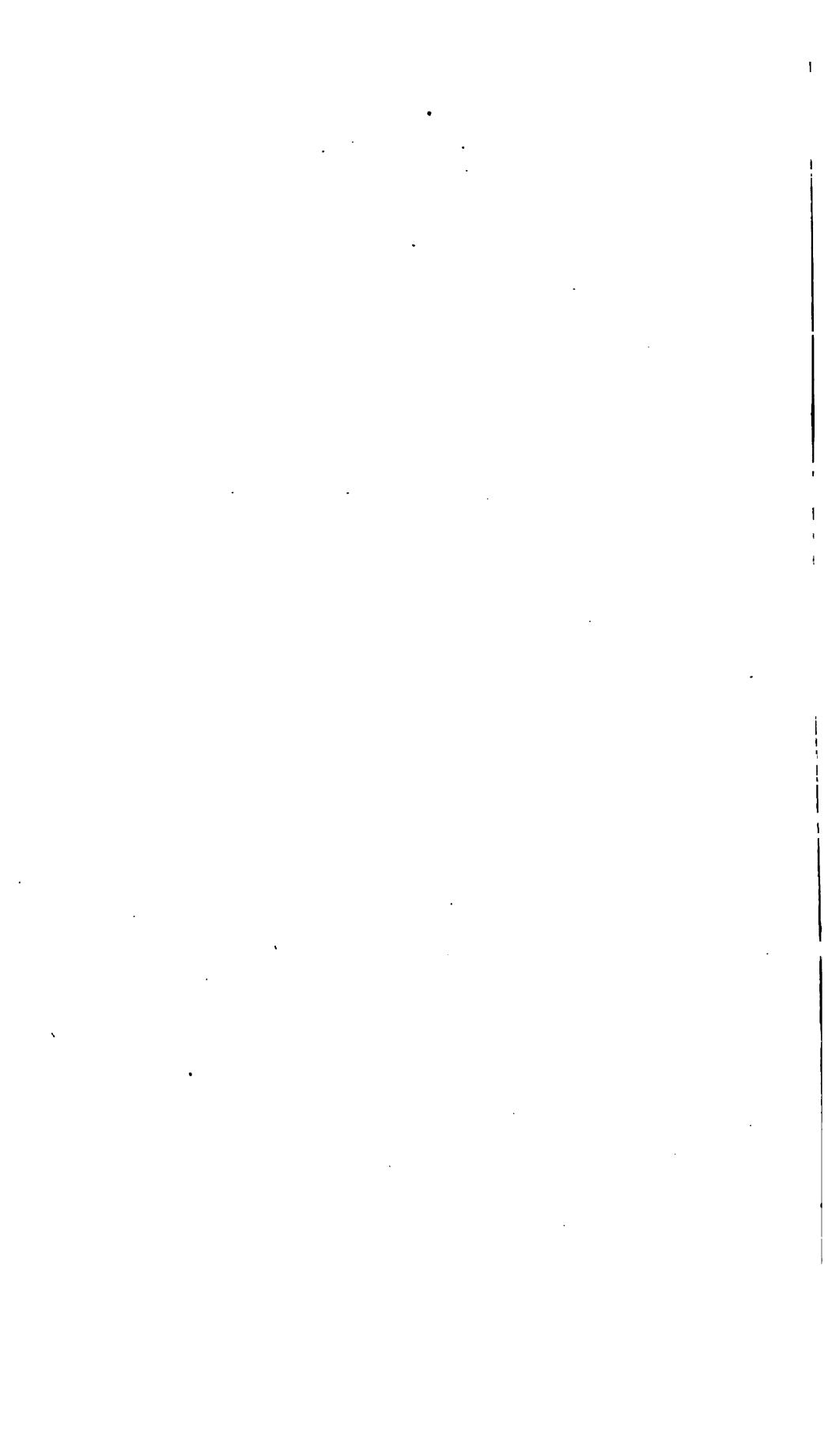
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HEPBURN BILL.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Wednesday, March 2, 1904.

The Committee met at 10.30 o'clock a. m., Hon. J. J. Jenkins in the chair.

The CHAIRMAN. In order to avoid any misunderstanding, it has been agreed that Mr. Dinwiddie will represent the friends of the bill, and Mr. Bartholdt, of Missouri, will represent the gentlemen opposed to the bill, and they will make the arrangements between themselves as to the division of time, and if they disagree the committee will have to determine it for them.

STATEMENT OF REV. EDWIN C. DINWIDDIE, LEGISLATIVE SUPER-INTENDENT OF THE AMERICAN ANTISALOON LEAGUE, 31 AND 32 BLISS BUILDING, WASHINGTON, D. C.

Mr. DINWIDDIE. Mr. Chairman and gentlemen of the committee, we are here this morning in support of H. R. 4072, which is popularly known as the Hepburn-Dolliver bill. In as much as there are a number of the members of the committee here who were not present at the hearing in January, it has been suggested upon both sides that it might be wise this morning to commence *de novo* and make our statements with reference to the bill and what it purports to do, and we shall introduce some other speakers representing affiliated organizations, and will reserve the right at the close of the hearing to rebut arguments that may be made upon the other side.

This proposed law is designed to supplement what was known as the Wilson law, approved August 8, 1890, and by which undoubtedly Congress and the people expected that the entire control of the liquor traffic within their own borders should be left in the hands of the people in the several States.

A few facts relative to the necessity for that legislation, as well as for this proposed, will be entirely in place.

Immediately after a decision by the Supreme Court in 1890, in the case of *Leisy v. Hardin* (135 U. S. 100), in which it was held that "The State had no power, without Congressional permission to do so, to interfere by seizure, or by any other action, in the prohibition of importation and sale by a foreign or nonresident importer of liquors in unbroken original packages," there sprung up in several of the States under the prohibitory policy great numbers of what were called "original package" saloons. The proprietors would buy their liquors without the State and have them sent in and sell them in the unbroken original packages, although the law of the State or the community in which they did business forbade the traffic in intoxicating liquors.

This created widespread indignation and gave rise to a stern demand from all over the country for redress from these unbearable conditions. Congress responded, as it had been suggested in the opinion of the court in the case just referred to it could do, by passing the Wilson law, which is given in the House Committee report submitted by Mr. Clayton, of Alabama (H. Rept. 3877, to accompany H. R. 15331, 58th Cong., 2d sess.), and which, by the courtesy of the committee, I shall append to this statement for the printed hearings. This report in itself is one of the clearest and most concise statements of what this bill is and will accomplish that could be made. (Exhibit A.)

However, in view of the mistaken ideas that appear to prevail among certain classes as to the scope of the measure, it seems entirely appropriate that some further facts be stated.

In construing the Wilson law, after having passed upon its constitutionality in *Rahrer's case* (140 U. S., 545) the court held in the subsequent case, namely, *Rhodes v. Iowa* (170 U. S., 412), that the effect of the law was to forbid the sale by a consignee of liquors imported from another State, but that the language of the Wilson law in the words, "arrival in such State," etc., contemplated their delivery to the consignee before State jurisdiction should attach.

It is in consequence of this decision that the remedial legislation proposed in House bill 4072 has been pressed for passage. It is true that the "original package" saloons, as they were known thirteen years ago, are not in operation, but the ingenious violators of laws—brewers, distillers, wholesale liquor dealers, retail venders, and others—have invented a number of subterfuges by the employment of interstate transportation agencies for the violation of law. It should be borne in mind that the bill before the committee is not in any sense a prohibition law per se, nor will its passage affect only those States having a prohibitory policy. The conditions it is designed to remove can exist in States having the license or dispensary policy, and do so exist to the extent of rendering even regulatory legislation of this character to a greater or less extent nugatory; and they exist in aggravated form in States having prohibitory or local-option laws.

We base our request for the passage of the law upon the broad principle that Congress should by law, as we believe it to be fully empowered to do under the Constitution, remove the obstacles to the successful carrying out of the internal policy of the State on this question, whatever that policy may be. Nor can it be truthfully declared that an inconsiderable portion of our territory is affected by the conditions which the decision of the Supreme Court on the Wilson law, in the case of *Rhodes v. Iowa*, has permitted to spring up and flourish in many sections. I think it is safe to say that not less than forty States of the Union have prohibitory or local-option laws in some form or another, and in many of these States large areas, including towns, townships, and counties, are under the operation of local-option laws. And it is impossible for them to enjoy the full fruitage of these laws, enacted, as we believe, in the proper exercise of their police powers, uniformly held by the court to be reserved to the States, without the remedial legislation asked, and which undoubtedly Congress intended to grant by the Wilson Act, approved August 8, 1890.

We are asking for no more than is fair and right under the constitutional powers of Congress when we ask that Congress shall so legislate upon the subject as that the States will have complete jurisdiction

over the subject within their own borders; and so that a nonresident of a State, with the connivance of representatives of interstate transportation agencies, will not be permitted to do what the State properly, in the exercise of its judgment on this question, has forbidden its own citizens to do. This whole question has been very carefully canvassed by many of those familiar with the conditions, and also versed in the law, and the legislation now proposed is believed to approach close to a proper solution of the question, and as remaining within the probability, if not the certainty, of the constitutional power of Congress.

In this connection I feel it is only necessary so say that I think it is true beyond any controversy that the States never intended to surrender—nor in my judgment did they actually surrender—their rights to protect the health, property, morals, and lives of their people under their police powers, nor do I think that any attitude on the part of the National Government, whether it be by act of omission or commission, by which the effective exercise of these powers by the States will be rendered nugatory, will be acquiesced in by the people of the States. As further evidence of the uniform policy of the Federal Government of recognizing the paramount rights of the States to regulate the liquor traffic in their own way—whether by license, local option, dispensary, or prohibitory law—I call attention to section 3243 of the Internal Revenue Laws, edition of 1900, which reads as follows:

“The payment of any tax imposed by the internal-revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such State or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or other purposes.” This, taken in connection with the passage of the Wilson law of 1890, and the whole trend of the Federal attitude toward the liquor business certainly settles the policy of the Federal Government in relation to the rights of the States in this matter.

And we therefore earnestly hope that the committee will recommend the passage of this bill. Cases of violation of State law which are against its policy and detrimental to the health and morals and prosperity of its people are possible under the present laws as construed by the Supreme Court. Instance after instance of this kind in various States could be cited. It seems to me that nothing more trustworthy and nothing more important for the consideration of this committee and the Congress with reference to the need for such legislation and the intolerable situation with which many States are confronted can be cited than the statement of one of the members of the House who has personal knowledge of conditions in his State, both as a citizen and as a judge upon the bench. And I take the liberty therefore of calling to your attention the remarks of this gentleman, the Hon. W. I. Smith, of Iowa, who said:

Mr. Speaker, in the case of *Leisy v. Hardin* the Supreme Court of the United States held that under the interstate-commerce clause of the Constitution one had a right to ship liquor into a State in original packages and there sell it in unbroken packages. Immediately after the decision was handed down Congress passed the Wilson bill, providing that upon the arrival of liquors in a State they should be subject to the police regulations thereof. The United States Supreme Court, in the Rhodes case,

held that "arrival" meant delivery to the consignee. Under this holding the practice has grown up in Iowa by which a nonresident ships a large number of jugs into the State addressed to himself, and then the soliciting agent goes about selling these liquors at retail in the town and simply transfers bills of lading, thus carrying on a retail business in that town in violation of the will of a majority of its people and using the express office as a retail liquor place.

So flagrant has it become in Iowa that in one of the towns of Colonel Hepburn's own county, when I had the honor of presiding on the bench in that district, as high as 100 jugs at a time were found in a certain express office addressed by the consignors to himself as consignee, without any indication that they should all be delivered, except to the several assignees of the bills of lading that might be found after the arrival of the goods in the State.

Under the decision of the Rhodes case these liquors were not subject to seizure and could be kept there in large quantities in the office of the express company and retailed from there to whomever would pay the case charges, the value of the liquor, and the cost of transportation. This harm has been so flagrantly conducted that the State supreme court during the last session ordered a writ of injunction to issue against one of the express companies, enjoining it from maintaining one of its offices as a place wherein to carry on the traffic of intoxicating liquors.

So flagrant has it become that the Iowa supreme court recently ordered the destruction of a large number of boxes containing liquor, found in the office of the express company, upon the theory that where they were sent C. O. D. in this way they were not sold until delivered and therefore not within the protection of the interstate-commerce clause of the Constitution.

* * * * *

Now, if we don't want this traffic carried on we ought to have the right to prevent a nonresident Iowan living in Brother Bartholdt's district sending liquor to himself in a dry town, insisting that under the decision of the Rhodes case they are entitled to immunity from seizure until they are delivered to the assignee, when he does not intend to receive them, and retailing these liquors to whomever will come up and advance the value of the liquor and the cost of transportation.

Similar statements were made by Mr. Hepburn, the author of the bill, who made the following statement in support of it as H. R. 15331 of the Fifty-seventh Congress on the floor of the House in January, 1903:

This bill is substantially the act of 1890, with the addition that in the first section we have inserted the words "before and after delivery." There is no difference between the first section of this bill and the present section except the introduction of those words. The original bill made intoxicating liquors introduced into a State subject to the law of the State upon "arrival" within the boundaries of the State. Now, the Supreme Court elected to construe that to mean after the delivery of the liquors within the boundaries of the State. After the delivery the State lost sight of the liquors and practically lost jurisdiction over them. The State authorities could do nothing in the way of the enforcement of the law, and therefore they have sought this legislation, giving a State jurisdiction either before or after delivery, after arrival within the limits of the State. And why should not this be so? Why should not the State of Missouri have jurisdiction over the importation of liquors within the State and designed for use in the State?

* * * * *

It will give the State of Iowa the power to destroy liquors when brought within the State if they are there in opposition to the provisions of the law of that State. It prevents the importer from fighting the statute of Iowa, because of the interstate commerce clause of the Constitution and the legislation thereunder. It will not prevent the introduction of liquor by any private individual unless it is brought there for some illegal purpose. It is not illegal for the gentleman to carry liquors into the State of Iowa for his own consumption. There is no statute of that kind. It is the illegal sale of the liquor that our statute has been enacted to prohibit.

* * * * *

We simply want to exercise our power over liquors imported into the State, the power that we would have the right to exercise but for the original-package clause of the Federal law. That is all.

Similar statements were made by Judge Lot Thomas, of Iowa, and by Mr. Clayton, of Alabama, who reported the bill from the Committee

on the Judiciary. Similar experiences have been complained of to our national headquarters and urgent appeals for our assistance in securing the passage of this remedial legislation from the States of Ohio, West Virginia, Maryland, Kansas, North Dakota, Washington, Maine, Pennsylvania, North Carolina, Tennessee, Georgia, Texas, and from many other States, both North and South.

A law was enacted by the last legislature of my own State, Ohio, giving the municipalities of that State the right to exclude the saloons by public vote, and over 160 cities and towns have availed themselves of this privilege during the last year and a half. The figures are about 160 towns and cities, ranging in population from 15,000 down, which, under the provisions of the Beal law passed two years ago in my State, have availed themselves of this privilege and excluded the saloons.

Mr. LITTLEFIELD. That is Ohio?

Mr. DINWIDDIE. Yes, sir; and 900 townships out of the 1,370 in round numbers, are absolutely under the operation of prohibitory legislation by local option. And the State attorney of our organization, as well as the executive head, representing the federation of all the churches and temperance organizations, have appealed to us for our help in securing the passage of this measure. In one of the counties of the State, from which, by the operation of local option in the townships and municipalities of the county, the saloons have been excluded, the agents of two of the interstate transportation companies have been doing a regular C. O. D. liquor business in violation of the State law, but shielded by the decision in the *Rhodes v. Iowa* case, heretofore referred to.

The prosecuting attorney, in connection with the county auditor of this (Harrison) county, in my own State, has sought to place the principals of these agents upon liquor tax duplicate of the State on the ground that they were allowing their offices to be run as liquor stores. But if the decision of the Federal court of the Iowa district is upheld, as under the *Rhodes* decision it is likely to be, no redress will be possible, and it will again be found that in a State like Ohio, not having the prohibitory policy, citizens of other States can carry on legally in local-option territory what the law of the State and of the community forbids to its own citizens. To show that the situation is a grievous and unnatural one, I quote from the opinion of the supreme court of the State of Iowa in the case of *State v. Pat Hanaphy*, decided May 15, 1902, as follows:

These holdings, it is needless to observe, render the power of the State to prohibit the traffic in liquors to a large extent nugatory and leave the agents of nonresident dealers to ply their trade with boot leggers and other resident violators of the law without effective hindrance; but we have only to declare the law as we find it. It is proper to add that all these cases under the authority of which this appeal is disposed of have been decided by a divided court. The dissent of Justices Harlan, Gray, Waite, Shiras, and Brown is supported by very persuasive reasoning and great weight of authority, but whatever we may think of the comparative merits of the arguments employed, we are in duty bound to follow the authoritative pronouncements of the court whose decision upon this and kindred questions is final. (90 N. W. Reporter, 60.)

We feel that Congress should strain a point to give to the State full and complete exercise of those powers which admittedly were reserved to themselves upon the adoption of the Federal Constitution, referring especially to the police powers of the State, under which come

all measures for the protection of the life, health, morals, and prosperity of the people within the State, so long as such regulations or prohibitions as the State may provide do not violate any part of the Federal Constitution. It is not my purpose to enter into a discussion of the legal or constitutional aspect of the claim presented to the committee, although I desire to say that the decisions of the Supreme Court touching the liquor question have unquestionably settled the following points, namely: That the State has exclusive and unlimited power to deal with the internal liquor traffic as it may see fit, subject always to the limitations just referred to (License Cases, *Mugler v. Kansas*, et al.). And in the *Bowman v. Northwestern Railway* case it was held that while a State could pass laws according to its legislative will, regulating or prohibiting the liquor traffic within the State, it could not prevent a nonresident dealer from shipping liquor into the State without violating the interstate-commerce clause of the Constitution. In the subsequent case of *Leisy v. Hardin*, they held further that the right of a resident importer to receive goods shipped to himself from another State, and the first sale by him of the original unbroken package, could not be prohibited by the State without the express permission of Congress.

It may be remarked in passing that for many years theretofore it had been held by the Supreme Court that silence on the part of Congress virtually gave the State permission to act with reference to commerce, which assuredly came within the interstate-commerce clause of the Constitution. The decision just referred to reversed the previous holdings of the court and compelled the passage of the well-known Wilson law. This law was held to be constitutional in the case of *Rahrer* (140 U. S., 545), but in the later *Rhodes* case, in construing the words "arrival in the State," etc., it was held that within the meaning of the law "arrival" meant after delivery to the consignee. So that the net result of the passage of the Wilson law was simply to forbid the sale by the consignee of the goods imported by him from another State. Following this decision various subterfuges and schemes to evade the local law had been devised and plied, at set forth heretofore, and from these conditions we appeal to Congress for redress.

The opposition which, it should be remarked, comes from those who have pecuniary reasons or interests in the violations of law in order to secure a market for their liquors—namely, distillers, brewers, and wholesale liquor dealers of the country—is stated to be on constitutional grounds.

That has been modified somewhat. On the 20th of January here the statement was made that a large portion of the German-American population in the country was opposed to this measure on the ground that it was an interference with so-called personal liberty and with the right to import liquors for personal and family consumption. It will be shown, I think, to-day and later on during the hearing that there is not by any manner of means a unanimous opinion on the subject as suggested by some of our German-American friends. It will be shown also that in practically no State of the Union is there any effort to interfere with the personal or family consumption of liquors by importation from abroad or from sister States. I have the testimony from a large number of States gotten from those qualified to speak, and I will introduce it at the proper time and ask that it appear in the printed hearings supplemental hereto. (Exhibit B.)

The claim is made first that the proposed legislation is unconstitutional because it is a delegation of Congressional authority to the State, or because the exercise of the powers conferred would give to the State extraterritorial jurisdiction over interstate shipments of liquors. I think it needless to argue this point. Nothing can be clearer than the utterance of Mr. Chief Justice Fuller, rendering the decision of the court in the Rahrer case (140 U. S., 561-564):

By the adoption of the Constitution the ability of the several States to act upon the matter solely in accordance with their own will was extinguished and the legislative will of the General Government substituted. No affirmative guaranty was thereby given to any State of the right to demand as between it and the others what it could not have obtained before, while the object was undoubtedly sought to be attained of preventing commercial regulations partial in their character or contrary to the common interests. And the magnificent growth and prosperity of the country attest the success which has attended the accomplishment of that object. But this furnishes no support to the position that Congress could not, in the exercise of the discretion reposed in it, concluding that the common interests did not require entire freedom in the traffic in ardent spirits, enact the law in question. In so doing Congress has not attempted to delegate the power to regulate commerce, or to exercise any power reserved to the States, or to grant a power not possessed by the States, or to adopt State laws. It has taken its own course and made its own regulation, applying to these subjects of interstate commerce one common rule, whose uniformity is not affected by variations in State laws in dealing with such property.

The principle upon which local-option laws, so-called, have been sustained is that while the legislature can not delegate its power to make a law it can make a law which leaves it to municipalities or the people to determine some fact or state of things upon which the action of the law may depend; but we do not rest the validity of the act of Congress on this analogy. The power over interstate commerce is too vital to the integrity of the nation to be qualified by any refinement of reasoning. The power to regulate is solely in the General Government, and it is an essential part of that regulation to prescribe the regular means for accomplishing the introduction and incorporation of articles into and with the mass of property in the country or State. (12 Wheat., 448.)

No reason is perceived why, if Congress chooses to provide that certain designated subjects of interstate commerce shall be governed by a rule which divests them of that character at an earlier period of time than would otherwise be the case, it is not within its competency to do so.

The differences of opinion which have existed in this tribunal in many leading cases upon this subject have arisen, not from a denial of the power of Congress, when exercised, but upon the question whether the inaction of Congress was in itself equivalent to the affirmative interposition of a bar to the operation of an undisputed power possessed by the States.

We recall no decision giving color to the idea that when Congress acted its action would be less potent than when it kept silent.

The framers of the Constitution never intended that the legislative power of the nation shall find itself incapable of disposing of a subject-matter specifically committed to its charge.

* * * * *

Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

The committee will recognize that this is the decision of the court upholding the validity of the Wilson Act, which the Hepburn bill, now under consideration, is designed to amend.

Next it is contended that in a subsequent decision the United States Supreme Court, in the case of *Vance v. Vandercook*, held that the right of a citizen to import liquor from another State or from foreign countries for his own personal use was a right that could not be interfered with by State legislation. We think an examination of this case, together with previous pronouncements of the court, particularly in

the *Mugler v. Kansas* case, in 1887, will show that no such unqualified and sweeping declaration was made concerning such importation should Congress act so as to remove the present obstacles to the enforcement of such legislation on the subject. However, this contention and observation in regard to it are entirely foreign to the subject-matter now before the committee. If such importation for personal use is a constitutional right which can not be impaired by State legislation, then we contend that the passage of the Hepburn bill can not render such an act unlawful or render valid any such enactment by the States.

All that the Hepburn bill will do and all we urge its enactment for is simply to give full scope to the legitimate exercise of the police powers of the State in dealing with this question. It will not make an unconstitutional law valid; it will not set up one policy of the State above another; it will simply give the State jurisdiction over liquors shipped within its own borders before as well as after delivery. If the opposition to this measure fear direful consequences to their business because of its enactment, they must realize that if it should be passed they have every opportunity to appeal to the good judgment and common sense of the people of the various States, through their State legislatures, for the enactment of legislation which they desire, or for the repeal of legislation to which they are opposed, or for the defeat of proposed legislation which they may deem inimical to the interests of their trade.

But I submit to the committee that the friends of this measure are entirely willing that this course should be pursued by both the friends and opponents of the liquor traffic. We simply ask, as Chief Justice Fuller said in his opinion in the *Rahrer* case, that Congress shall enact a law which will remove "an impediment to the enforcement of the State laws in respect to imported packages in their original condition created by the absence of a specific utterance on its part."

It is further claimed that, while Congress has the power to regulate, it has not the power to prohibit interstate commerce.

I am satisfied that that will be relied upon very largely by the opposition, so far as constitutional grounds are concerned; but it seems to me that if the Chief Justice's statement in the *Rahrer* case which was just quoted was a sound one the answer to this objection has already been given, and if the decision is not the correct one the Wilson law itself would not have been constitutional, because Congress would then be held to have legislated for the States, which confessedly it could not do. From the very foundation of the Government down the right to sell an imported article was held to be an integral part of interstate or foreign commerce; and yet by the exercise of Congressional power, specifically upheld in the *Leisy v. Hardin* case, the right was taken away from the importer of intoxicating liquors to sell the same after the passage of the Wilson law, and as construed in *Rhodes v. Iowa*, heretofore referred to.

There is a wide divergence of opinion as to whether Congress can simply regulate or prohibit interstate commerce, or, more accurately speaking, as to whether the term "regulate" includes the power to prohibit. But we rest on the assertion of the Chief Justice concerning the effect of the legislation proposed, as heretofore quoted in the *Rahrer* case, as well as the very direct statements on this specific point in the lottery cases, decided February 23, 1903 (188 U. S., 358-362),

and part of which opinion I also append as Exhibit C. It seems to me that one of the strongest reasons in support of the constitutionality of the proposed measure and against the statement advanced that Congress can not prohibit interstate commerce by passing a law which would be prohibitive in its results is found in the fact that Congress has already done it in the case of the transportation of nitroglycerin and other similar explosive substances, the proviso as to which in the interstate-commerce law reads:

Any State, Territory, district, city, or town within the United States should not be prevented by the language used from regulating or from prohibiting the traffic in the transportation of those substances between persons or places lying or being within their respective territorial limits, or from prohibiting an introduction thereof into such limits for sale, use, or consumption therein.

In view of the manifold and admitted evils of the liquor traffic and the harmful results that everywhere follow from the sale or use of intoxicating liquors, of which Federal, State, and district courts have all taken cognizance, as shown by the following extracts from court decisions, we ask for the largest measures of redress from the conditions which have been named, and which is only possible either by the legislation proposed, allowing said jurisdiction to attach immediately upon the arrival of liquors within the State, or by a reclassification of the subjects of interstate commerce.

Great solicitude is expressed by the brewers and distillers for the supposed infraction of the Constitution which this law will entail. Permit me to say that nothing would prevent them from joining with the petitioners for this legislation for the passage of the Hepburn bill if they were assured that it would fail before the courts. If their solicitude for the Constitution and the laws were to be directed along practical lines, we could suggest that a close observance of and conformity to existing regulations and prohibitions by the members of that trade over the entire country would contribute to that end. The reason the Wilson law was demanded and passed was because of their unwillingness to obey the law and live in conformity with regulations, etc., established by the people of the States; and the necessity for the legislation proposed has likewise come about because of their ingenuity in seeking and their willingness to employ methods for evading and violating the law.

In conclusion, we ask for this legislation because of the need for it throughout the States, because of the schemes and artifices devised for breaking the law, and we feel ourselves entitled to the proposed relief.

During the past several years the liquor interests have clamored for certain legislation affecting their internal trade, legislation to which we could have offered serious opposition and incited a tremendous protest over the entire country. We abstained therefrom as temperance people, not because arguments could not have been advanced from our standpoint against the reduction of the brewers' tax and certain financial concessions urged and secured by the distillers, but because we preferred to keep our hands off those matters affecting the purely commercial and internal interests of the trade, so that we could be free to ask for such fair and reasonable and legitimate legislation as we needed, and to which we believe we are entitled, and as partially represented in the bill now before your committee.

I will incorporate, with the permission of the committee, extracts

from the decisions of the Supreme Court which are on this line, and will not take the time to read them, showing the direful consequences that are flowing and must of necessity flow from the traffic in intoxicating liquors as carried on over the country.

I want to give, as previously stated, a few extracts showing that there seems to be no disposition on the part of the States in the past and no disposition on the part of many States at least—practically all the States—in the time to come to do what our German-American brothers who were present at the hearing on the 20th of January suggested—interfere with the so-called right of importation of intoxicating liquors for personal and family use.

I ought to say that the American Antisaloon League, national and interstate, which I officially represent, is not properly considered a separate organization outside of the churches and the temperance organizations. It is a federation or league of all the churches and temperance societies cooperating in absolutely non or omni partisan and interdenominational temperance effort. So when the league speaks upon this bill it speaks for the federated churches and temperance societies all over the country, but a number of such organizations and churches have found it possible to be directly represented before your committee in support of the Hepburn-Dolliver bill.

I thank you for this privilege and for your courteous attention, taking the liberty you have given of appending various exhibits in this connection.

Mr. GILLETT. Would you consent to an amendment that it should not apply to liquors transported into a State for personal use and consumption?

Mr. DINWIDDIE. Is there any necessity for doing that?

Mr. GILLETT. You say the States favor that and you have no objection to it?

Mr. DINWIDDIE. Yes, sir; for the reason that the principle underlying this bill is that the States should have control of this business within their own borders. I certainly should not favor any proviso being placed in the bill which would interfere with the principle of the States having permission to handle this question within their borders as they see fit. Our contention is the States should be so situated that they can adopt their own policy on this question within their own borders in their own way and under the exercise of their police powers without outside interference. If a provision of the kind you name is inserted, Congress then attempts to determine a set policy for all the States.

EXHIBIT A.

House Report No. 3377, Fifty-eighth Congress, second session, by Mr. Clayton, of Alabama, to accompany H. R. 15331 (the Hepburn bill).

The Committee on the Judiciary, to whom was referred the bill (H. R. 15331) to amend an act to limit the effect of the regulations of commerce between the several States and with foreign countries in certain cases, approved August 8, 1890, having considered said bill, submit the following report:

Nearly all of the States have passed laws, as police regulations, dif-

fering to some extent in their provisions, for the prohibition, regulation, or control of intoxicating liquors within their respective boundaries.

In the case of *Leisy v. Hardin* (135 U. S., 100) the Supreme Court held that any citizen of a State had the right under the Constitution of the United States to import any intoxicating liquors into another State, and that in the absence of Congressional permission the State into which such liquors were imported had no power, in the exercise of its authority of police regulations, to enact laws to prohibit or regulate the sale of such liquors while they remained in the original packages.

The effect of this decision of the Supreme Court was to deny to the States all power to control or prohibit the sale of intoxicating liquors transported from one State into another while they remained in the original packages.

To remove the effect of this decision, and to authorize the several States, in the exercise of their police powers, to prohibit or control the sale of intoxicating liquors, the act of August 8, 1890, was passed. That act provided—

that all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

In the case *In re Rahrer* (140 U. S., 545) the Supreme Court of the United States held that this act was constitutional and valid and conferred upon the States the powers enumerated therein. But in the case of *Rhodes v. Iowa* (170 U. S., 415) a question arising under this act again came before the Supreme Court, and in defining the scope and meaning of the act the court held that under its provisions liquors transported from one State into another remained under the protection of the interstate-commerce laws until they were delivered to the consignee, and that the State law was inoperative to reach them until they were delivered by the common carrier to the person to whom they were consigned.

The effect of this decision was practically to nullify the act of 1890 so far as the transportation and delivery of intoxicating liquors within the State was concerned. Under the law, as thus construed, dealers in intoxicating liquors located in some of the States sent out their soliciting agents and established agencies in other States, who traveled over and canvassed the country and solicited sales and took orders for intoxicating liquors to be shipped in by the principal, consigned to the subscribers—sometimes to be sent to them direct, and in other cases to be sent to them in care of the soliciting agent.

By this method regular business of dealing in intoxicating liquors by the foreign dealer has been kept up in many of the States with impunity. Under this system the States are entirely powerless either to prohibit such sales or to exercise any control or regulation over them. They can not even impose a license or any restrictions whatever on the business carried on in this manner.

It is the purpose of this bill to correct this evil and to subject intoxicating liquors imported from one State into another to the jurisdiction

of the laws of the State into which they are imported on the arrival of such liquors within the boundaries of such State.

Your committee therefore reports the bill back to the House with the following substitute amendment, and recommends that the bill as amended do pass:

That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within the boundary of such State or Territory, before and after delivery, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquors or liquids had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

SEC. 2. That all corporations and persons engaged in interstate commerce shall, as to any shipment or transportation of fermented, distilled, or other intoxicating liquors or liquids, be subject to all laws and police regulations with reference to such liquors or liquids, or the shipment or the transportation thereof, of the State in which the place of destination is situated, and shall not be exempt therefrom by reason of such liquors or liquids being introduced therein in original packages or otherwise.

Amend the title so as to read: "A bill to limit the effect of the regulations of commerce between the several States and with foreign countries in certain cases."

EXHIBIT B.

State laws not against importation for personal or family use.

Here is what the superintendents of our State league in a number of the States say:

Oregon.—Our State does not seek to prevent the importation of intoxicating liquors for personal or family use.

Rhode Island.—Rhode Island has no law to prevent the importation of liquors for personal or family use; nothing that can be so construed.

Wisconsin.—There are no laws in Wisconsin preventing the importation of liquors for personal or family use. There are absolutely no statutes in regard to this matter in the State.

Here is West Virginia:

Our State law does not seek to prevent the importation for personal or family use of beer, wine, and other intoxicating liquors. On the contrary, at my request the taxation and finance committee of our house, at the last session of our legislature, placed in the C. O. D. bill, which they were then considering, an exception of "the bona fide consignee" thereof who has in good faith ordered the same for his personal use.

Maine.—Our State has no law to prevent the importation for personal or family use of beer, wine, and other intoxicating liquors, and we would object to such a law if proposed.

Connecticut.—We do not attempt to invade private or family rights and have no law for that purpose on our statute books.

Tennessee.—No; our State is not seeking by law to prevent the importation, for personal or family use, of beer, wine, and other intoxicating liquors.

Indiana.—We are informed by Colonel Ritter that we have no law in our State that prevents the importation, for personal or family use, of beer, wine, or other intoxicating liquors.

Illinois.—We do not seek to interfere with personal or family use of beer, wine, or other liquor or the obtaining of it for that purpose.

Kansas.—In answer to your question on the attitude of Kansas legislation toward the personal and family use of liquor, you may be assured that we have no legislation whose aim is to curtail the privilege of individuals who desire to have liquor shipped to themselves for their own use.

Washington.—We have no law in the State of Washington prohibiting the importation, for personal or family use, of beer, wine, or other intoxicating liquors.

California.—Our attorney authorizes me to say that California does not seek by law to prevent the importation, for personal or family use, of beer, wine, and other intoxicating liquors.

My own State of Ohio, in all its local option and regulatory legislation, expressly exempts the personal and family use in the clause relating to "selling, furnishing, or giving away"—we have come to know the traffic well enough to provide against the makeshift of "giving" liquors, only further providing against a man's residence becoming a "place of common resort" for drinking purposes, etc.

EXHIBIT C.

Excerpts from Supreme Court decision in lottery cases (188 U. S., 358-362), decided February 23, 1903, opinion being read by Mr. Justice Harlan.

That regulation may sometimes take the form or have the effect of prohibition is also illustrated in the case of *in re Rahrer* (140 U. S., 545). In *Mugler v. Kansas* (123 U. S., 623) it was adjudged that State legislation prohibiting the manufacture of spirituous, malt, vinous, fermented, or other intoxicating liquors within the limits of the State, to be there sold or bartered for general use as a beverage, does not necessarily infringe any right, privilege, or immunity secured by the Constitution of the United States or by the amendments thereto. Subsequently, in *Bowman v. Chicago, etc., Railway Company* (125 U. S., 465), this court held that ardent spirits, distilled liquors, ale, and beer were subjects of exchange, barter, and traffic, and were so recognized by the usages of the commercial world, as well as by the laws of Congress and the decisions of the courts. In *Leisy v. Hardin* (135 U. S., 100) the court again held that spirituous liquors were recognized articles of commerce, and declared a statute of Iowa prohibiting the sale within its limits of any intoxicating liquors, except for pharmaceutical, medicinal, chemical, or sacramental purposes, under a State license, to be repugnant to the commerce clause of the Constitution, if applied to the sale, within the State, by the importer, in the original, unbroken packages, of such liquors manufactured in and brought from another State. And in determining that case the court said that—

whether a State could prohibit the sale within its limits, in original, unbroken packages, of ardent spirits, distilled liquors, ale, and beer imported from another State, this court said that they were recognized by the laws of Congress as well as by the commercial world "as subjects of exchange, barter, and traffic," and that whatever our individual views may be as to the deleterious or dangerous qualities of particular articles, we can not hold that any articles which Congress recognized as subjects of commerce are not such. (*Leisy v. Hardin*, 135 U. S., 100, 110, 125.)

Then followed the passage by Congress of the act of August 8, 1890 (26 Stat., 313, c. 728), providing "that all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same

manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." That act was sustained in the Rahrer case as a valid exercise of the power of Congress to regulate commerce among the States.

In *Rhodes v. Iowa* (170 U. S., 412, 426) that statute—all of its provisions being regarded—was held as not causing the power of the State to attach to an interstate-commerce shipment of intoxicating liquors "whilst the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery there to the consignee."

Thus under its power to regulate interstate commerce, as involved in the transportation, in original packages, of ardent spirits from one State to another, Congress, by the necessary effect of the act of 1890, made it impossible to transport such packages to places within a prohibitory State and there dispose of their contents by sale; although it had been previously held that ardent spirits were recognized articles of commerce, and, until Congress otherwise provided, could be imported into a State and sold in the original packages despite the will of the State. If at the time of the passage of the act of 1890 all the States had enacted liquor laws prohibiting the sale of intoxicating liquors within their respective limits, then the act would have had the necessary effect to exclude ardent spirits altogether from commerce among the States, for no one would ship, for purposes of sale, packages containing such spirits to points within any State that forbade their sale at any time or place, even in unbroken packages, and, in addition, provided for the seizure and forfeiture of such packages. So that we have in the Rahrer case a recognition of the principle that the power of Congress to regulate interstate commerce may sometimes be exerted with the effect of excluding particular articles from such commerce.

EXHIBIT D.

Various supreme and other high court statements concerning the traffic in intoxicating liquors.

"By the general concurrence of opinion of every civilized and Christian community there are few sources of crime and misery to society equal to the dramshop, where intoxicating liquors in small quantities to be drunk at the time are sold indiscriminately to the parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor stores than to any other source.

"The right to sell intoxicating liquors, so far as such a right exists, is not one of the rights growing out of citizenship of the United States. There is no inherent right in a citizen to sell intoxicating liquors by retail; it is not a privilege of a citizen of a State, or of a citizen of the United States." (*Crowley v. Christensen*, 137 U. S., 86.)

"Nor can we ignore the fact, established by statistics accessible to everyone, that the disorder, pauperism, and crime prevalent in the country are in large measure directly traceable to this evil. Nor can it be said that government interferes with or impairs anyone's con-

stitutional right of liberty or property when it determines that the manufacture and sale of intoxicating drinks for general or individual use as a beverage are or may become hurtful to society and to every member of it, and is therefore a business in which no one may lawfully engage. (Mugler v. Kansas, 123 U. S. 623.)

"It is not necessary for the sake of justifying the State legislation now under consideration to array the appalling statistics of misery, pauperism, and crime which have their origin in the use or abuse of ardent spirits. The police power, which is exclusively in the States, is alone competent to the correction of these great evils, and all measures of restraint or prohibition necessary to effect the purpose are within the scope of that authority. There is no conflict of power or of legislation as between the States and the United States. Each is acting within its sphere and for the public good, and if a loss of revenue should accrue to the United States from a diminished consumption of ardent spirits she will be the gainer a thousandfold in the health, wealth, and happiness of the people.

"The evils attending the vice of intemperance in the use of spirituous liquors are so great that a natural reluctance is felt in appearing to interfere within constitutional grounds with any law whose avowed purpose is to restrict and prevent the mischief."

EXHIBIT E.

Certified copy of resolutions of the Illinois general assembly in favor of Hepburn bill.

FORTY-THIRD GENERAL ASSEMBLY. HOUSE JOURNAL. NO. 25. THURSDAY, FEBRUARY 26, 1903.

Thursday, February 26, 1903.

At the hour of 10 o'clock a. m.,
The house met pursuant to adjournment,
The speaker in the chair.

Mr. Schlagenhauf, from the committee on federal relations, to which was referred House resolution No. 54, to wit:

Whereas there has passed the House of Representatives of the United States and is now pending in the Senate of the United States a bill which provides that:

"SECTION 1. All fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall upon arrival within the boundary of such State or Territory before and after delivery be subjected to the operation and effect of the laws of such State or Territory, enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquors or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise.

"SEC. 2. That all corporations and persons engaged in interstate commerce shall, as to any shipment or transportation of fermented, distilled, or other intoxicating liquors or liquids, be subject to all laws and police regulations with reference to such liquors or liquids or the shipment or transportation thereof of the State in which the place of destination is situated, and shall not be exempt therefrom by reason of such liquors or liquids being introduced therein in original packages or otherwise."

Therefore be it resolved by the house of representatives of the State of Illinois, That the members of the United States Senate from the State of Illinois, the Honorable Shelby

M. Cullom and the Honorable William E. Mason, be requested to use their utmost efforts for the passage of said bill.

And be it further resolved, That the clerk of this house be, and is hereby, directed to transmit without delay to the Honorable Shelby M. Cullom and the Honorable William E. Mason copies of this resolution.

Reported the same back with the recommendation that it be adopted.

The report of the committee was concurred in and the resolution was adopted.

At the hour of 11.55 o'clock a. m.,

Mr. Shanahan moved that this house do now adjourn.

The motion prevailed,

And the house stood adjourned.

UNITED STATES OF AMERICA, STATE OF ILLINOIS, *ss*:

Office of the Secretary of State.

I, James A. Rose, secretary of State of the State of Illinois, do hereby certify that the foregoing is a true copy of the journal of the house of representatives of the forty-third general assembly of the State of Illinois, relating to the adoption of a house resolution relating to intoxicating liquors, the original of which is now on file in my office.

In witness whereof, I hereto set my hand and affix the great seal of State, at the city of Springfield, this 27th day of February, A. D. 1904.

[SEAL.]

JAMES A. ROSE,
Secretary of State.

EXHIBIT F.

Resolutions of the Iowa general assembly (1904) in favor of the Hepburn-Dolliver bill.

Whereas the Hepburn-Dolliver bill (H. R. 4072, S. 1390) which provides for the police regulation of the liquor traffic in each State by home rule is now pending in the Congress of the United States; and

Whereas the said bill, in its scope, provides for the legitimate exercise of the police power of the States in dealing with the liquor traffic, and does not make an unconstitutional law valid, or set up one policy of the State above another, or does not invade the so-called personal liberty of the people, but gives to each State jurisdiction over liquor shipped within its own borders, before as well as after delivery, and is the fulfillment of the Constitution of the United States, guaranteeing to each State the right of a republican form of government and home rule in commercial affairs; and

Whereas Iowa is, at the present time, deprived of her constitutional right to self-government in such commercial affairs: Therefore be it

Resolved by the senate of the general assembly of Iowa, the house concurring, That it requests the Iowa delegates in the Senate and House of Representatives of Congress, now in session, to use all honorable means to secure the consideration and early passage of this bill.

EXHIBIT G.

Statement of permanent committee on temperance of the General Synod of the Evangelical Lutheran Church in the United States.

OFFICE OF THE SECRETARY,
Frederick, Md., March 3, 1904.

To the Judiciary Committee, House of Representatives, Washington.

GENTLEMEN: I have pleasure in speaking for the General Synod of the Evangelical Lutheran Church in the United States of America. This is the oldest general Lutheran body in this country. It is composed of 25 district synods, ranging from New York and New Jersey on the east to California on the west. There is a considerable German element in most, if not all, of our synods and several, like Wartburg and German Nebraska, are practically exclusively so, from which it will be seen that the attempt to identify all German-Americans with the opposition to this measure must fail. The General Synod has a communicant membership of over 209,000. Besides the communicant membership of the church, its Sunday school enrollment is about 220,000, many of whom are not included in the church membership just mentioned. It is safe to assume, therefore, that it represents a constituency of between three hundred and three hundred and fifty thousand. Nearly all the district synods have by resolution placed themselves on record as favoring the passage of what is known as the Hepburn-Dolliver bill, now before your committee, but the General Synod itself is on record by unanimous vote at its forty-first session, held in Baltimore, June 3 to 11, 1903, as favoring the passage of this bill by the adoption of the following resolution, viz:

Resolved, That we earnestly favor the enactment of the so-called Hepburn bill giving the States control of liquors shipped into the States, both before and after delivery, and respectfully urge the Congress to enact it into law at the next session.

The permanent committee on temperance, which is the regularly constituted agency to represent the church on this question, and of which I am secretary, hereby presents this action of the above body to your committee and urges prompt and favorable consideration of the measure to the end that it may be enacted into law during this session of Congress.

We do not attempt to argue the legal phases of the question, but it is believed that a review of the decisions of the Supreme Court in the Iowa transportation cases and in subsequent decisions since the passage of the Wilson law, which this is designed to amend, warrant the belief in the constitutionality of the measure.

With great respect, I have the honor to remain, yours, very respectfully,

CHAS. F. STECK,
*Secretary Permanent Committee on Temperance,
Evangelical Lutheran Church in United States.*

EXHIBIT H.

Showing constitution, by-laws, methods, etc., of the American Anti-Saloon League and affiliated State leagues.

CONSTITUTION AND BY-LAWS.

ARTICLE I.—*Name.*

The name of this organization is the American Anti-Saloon League.

ARTICLE II.—*Principal office.*

The principal office of the league shall be at Washington, D. C.

ARTICLE III.—*Object.*

The object of this league is the suppression of the saloon. To this end we invite the alliance of all who are in harmony with this object, and the league pledges itself to avoid affiliation with any political party as such and to maintain an attitude of neutrality upon questions of public policy not directly and immediately concerned with the traffic in strong drink.

ARTICLE IV.—*Constituency.*

All organizations pledging cooperation shall be members of this league and shall be entitled to representation in the league and in its national conventions, as hereinafter provided.

ARTICLE V.—*Officers.*

The officers shall be a president, seven vice-presidents, a general superintendent, a legislative superintendent, a recording secretary, a corresponding secretary, and a treasurer. Eight other persons in addition to the above officers shall constitute the executive committee of the league. The officers and additional members of the executive committee shall be elected annually by the national convention. Vacancies in the offices of the national league occurring between national conventions shall be filled by the executive committee.

ARTICLE VI.—*Board of direction.*

There shall be a board of direction consisting of one representative from each of the organizations having membership in the league. Annual conventions shall be held at such times and places as this board of direction shall determine, and the members of the board shall be the medium of communication between the national league and the bodies thus represented.

ARTICLE VII.—*Board of trustees.*

There shall be a board of trustees of the league, composed of two representatives from each State league, one of whom shall be the State superintendent and the other elected by the State committee or State board of trustees.

ARTICLE VIII.—*Headquarters committee.*

There shall be a national headquarters committee consisting of three persons chosen annually by the national board of trustees.

ARTICLE IX.—*Representation in annual conventions.*

SECTION 1. In annual conventions representation from recognized and affiliated bodies shall be as follows: Ten delegates from each national body and five delegates from each State organization holding stated conventions, five delegates from each State antisaloon league, and two delegates from every other cooperating organization holding annual conventions.

SEC. 2. The members of the executive committee, board of direction, board of trustees, and headquarters committee shall be members *ex officio* of the convention.

SEC. 3. For the purpose of representation religious denominations and international organizations shall be considered as national bodies and the District of Columbia and the Territories shall be considered as States.

ARTICLE X.—*Amendments to the constitution.*

This constitution may be amended at any annual convention upon the written recommendation of the executive committee by a two-thirds vote of the delegates present; but in the absence of such recommendation only on the vote of three-fourths of such delegates.

BY-LAWS.

1. The general superintendent shall give his entire time to the organization of the league and the superintendency of the work of the league throughout the United States.

2. The legislative superintendent shall represent the league in the effort to secure improved temperance legislation by Congress with the counsel and advice of a legislative committee which shall be appointed by the executive committee. When not engaged in such work he shall give his time in work for the league under the direction of the headquarters committee.

3. The recording secretary shall keep a record of proceedings of the national convention and publish the same when authorized for sale and distribution. He shall keep a record of the proceedings of the executive committee and report a digest of the same annually to the national convention.

4. The corresponding secretary shall issue notices of the meetings of the executive committee and send requests to State leagues and affiliated and other bodies for the appointment of delegates to the national conventions and such other work as properly pertains to the office.

5. The board of trustees shall investigate the status of the financial condition of the various State leagues and make apportionment among the various State leagues of the amount required to meet the expenses of the national league, as reported by the headquarters committee.

6. The headquarters committee shall direct and control the movement and expenditure of the general and legislative superintendents.

It shall prepare a budget of the probable expenses of the national league and report the same to the national board of trustees for their guidance. It shall report its work from time to time to the executive committee.

7. When a vacancy occurs or is about to occur in the office of State superintendent of the league in any State, the State authorities of said league shall at once notify the general superintendent and by the concurrent action of the general superintendent and State authorities a superintendent shall be chosen.

8. The general superintendent, with the approval of the national headquarters committee, may go into any State or Territory where the Anti-Saloon League has not been organized, or has ceased to exist, or is not at work, or is not affiliated with the American Anti-Saloon League, and where no affiliated organization is doing work along anti-saloon league lines, and arrange for a representative meeting of the churches, temperance societies, and other organizations opposed to the saloon, the organization of a State antisaloon league, which shall be affiliated with the American Anti-Saloon League, the selection of a State board, and the appointment of a superintendent with the concurrence of that board.

9. It shall also be the duty of the national headquarters committee to issue a commission to each State antisaloon league superintendent, who shall be recommended by the general superintendent and State authorities.

10. Whenever written charges are filed by a responsible person or persons with the general superintendent against any State superintendent for the following causes: Dishonesty, immoral or improper conduct, or the administration of his office in such a manner as to compromise the cause of temperance in his own State or prejudice the American Antisaloon League or impede its progress, the said general superintendent shall inform the State authorities, carefully investigate the matter, and, if the case seems to demand it, shall arrange for a conference, as soon as possible, of three factors, viz, the State headquarters committee, the national headquarters committee, and the general superintendent, to try the case; and the concurrence of two of these factors shall be required to reach a verdict. By the same concurrence of two penalties may be inflicted as follows: Admonition, or removal from the superintendency. A majority vote of the members present shall be sufficient to determine the attitude of either committee for the above purpose.

11. Any of the factors above named may appeal at once from the decision of the other two to the regular meeting of the board of trustees for the American Antisaloon League, but a superintendent removed by the two shall continue removed pending the decision of the appeal. No member of the original committee of trial shall vote on the appeal. The decision of the board of trustees, by a majority vote of the members present at a regular meeting, shall be final.

12. If the State authorities persist in retaining a superintendent after the board of trustees has approved a decision against him, such State league shall cease to be affiliated with the American Antisaloon League.

STATE LEAGUE RULES.

The following rules should be observed by the State Anti-Saloon League and by auxiliary and subordinate leagues, in giving to voters information and recommendations respecting candidates for office and measures to be voted upon at approaching elections:

First. Secure fullest possible list of temperance voters, with their addresses and party preferences.

Second. By letters of inquiry addressed to candidates for office and to others, by personal interviews, and by all other proper methods, secure fullest possible information respecting the fitness of candidates and measures to receive the antisaloon support.

Third. Be sure that all information given to the voters is unquestionably correct.

Fourth. The following methods may be adopted in conveying to the voters such information and recommendations as the league decides to give:

(a) Personal interviews when this can be done.

(b) Circulars addressed to known antisaloon voters, or to others, as may be deemed best.

(c) Newspaper publication, when widest possible publicity is desired.

Fifth. The information given to voters will consist of:

(a) Recommendations of individual candidates, and measures, when, according to rule 6, this can be done.

(b) A statement of facts respecting rival candidates without any recommendations.

Sixth. Never endorse a measure unless it is related to the cause of temperance reform.

Never endorse a candidate unless,

(a) There is a good and sufficient reason why the league should and does desire and seek his election; and also

(b) A good and sufficient reason why the league should and does desire and seek the defeat of his principal competitor or competitors.

Seventh. No partisan, denominational, personal, or other kindred preference should have any weight in determining the decisions of the league, or the information given to the voters. All measures and all candidates should be considered and treated in every particular with absolute impartiality.

Eighth. The State league, while assuming responsibility for all action taken, will be assisted by auxiliary and subordinate leagues in all this work of aiding voters to cast their ballots for temperance reform, as follows:

[a] County leagues in matters pertaining to county measures and candidates for county offices.

[b] City or town leagues in matters pertaining to their respective municipalities.

[c] All leagues will act in harmony with and seek to carry out the action of leagues to which they are auxiliary.

[d] While the league claims no right or authority to dictate to individual voters as to their action at the polls, it does most earnestly call their attention to the measureless and vital importance of all friends of saloon suppression standing and acting together as a unit against a combined and common enemy of every sacred human right and interest. All possible pains will be taken and an immense amount of labor

performed to enable and aid them to do so. Those who ardently and truly desire the success of the antisaloon cause should and doubtless will sink all minor considerations and exert their influence and cast their ballots according to the information and recommendations of the Anti-Saloon League.

EXHIBIT I.

THE CHRISTIAN CIVIC LEAGUE OF MAINE,
Eastport, Me., March 2, 1904.

Hon. JOHN J. JENKINS, *Chairman,*
And members of the Committee on the Judiciary,
Washington, D. C.:

As associate secretary of the Christian Civic League of Maine, I respectfully submit the following statement, showing that the Hepburn-Dolliver bill should become a law, in justice to the moral and business interests of our State.

I. The officials and citizens of Maine are honestly endeavoring to enforce their prohibitory law, in the belief that all the interests of the State are thereby conserved. Our prison population is nine less than a year ago. The commitments to our jails for intoxication were 829 less last year than the preceding year. The costs of criminal prosecution were about \$4,000 less last year than the year before. The savings-bank deposits (which we associate with our no-license policy) were much increased, and the State received in 1903 over \$500,000 in taxes from these banks. Below we give the figures from the report of the inspectors of prisons and jails for 1902 and 1903 to show the great benefits of the prohibitory law and by comparison what our officials are doing in most counties for a more rigid enforcement of that law.

County.	Commitments for drunkenness.		Commitments for selling liquor.	
	1902.	1903.	1902.	1903.
Androscoggin.	566	248	68	57
Aroostook.	237	208	7	28
Cumberland ^a .	1,067	961	93	68
Franklin.	31	21	6	21
Hancock.	23	15		10
Kennebec.	425	117	14	32
Knox.	69	55		7
Lincoln.	36	21		5
Oxford.	70	68	35	37
Penobscot ^a .	366	401	9	43
Piscataquis.	1	1	3	2
Sagadahoc ^b .				
Somerset.	39	13	5	11
Waldo.	6	4	1	5
Washington.	54	52	4	7
York.	203	176	3	18
Total.....	8,193	2,364	234	346

^aThe liquor law was unenforced last year in Cumberland and Penobscot counties. In the former there was a slight decrease in the commitments for drunkenness, but the arrests for drunkenness numbered 3,175 in 1903, the largest number ever recorded before being 2,776, in 1895.

^bNo jail in Sagadahoc County.

II. Last winter I visited four saloons at Campobello, New Brunswick, owned and managed by Owen Batson, James L. Wilmot, and (two) Walter H. Foss. The principal trade of each of these saloons is to citizens of Maine, 8,000 of whom are residing within 3 miles of

them. Furthermore, Messrs. Wilmot and Foss have both been convicted under our criminal laws, and the latter last year defaulted his bonds for over \$1,000 to escape going to jail. These men are not only furnishing liquor to citizens of Maine, but one of them is managing a wholesale establishment and, from his Canadian retreat, is sending liquor circulars all over our State, and it is believed that he is shipping liquors to some purchasers in Maine who are retailing it as his agents in violation of the law. In January a man told my associate, Rev. C. E. Owen, that he counted over 100 C. O. D. packages of liquor in the express office at Kingman, Me. Many of them bore fictitious names, and many of them were sold "to pay express charges" to any person who might call for them. In Oxford County and some other parts of the State sheriffs have instructed their deputies to seize such packages, but that right is not acknowledged by the shippers, and a case from Rumford Falls has recently been carried from the supreme judicial court to the law court to decide that point. In all parts of Maine the interstate commerce law renders it difficult to seize liquors brought from without the State and intended for unlawful sale. Often an obliging station agent or other employee permits the delivering of the liquors at night and in the morning the officers, who have been keeping faithful watch during business hours, find that they have been defrauded.

III. The question may be raised whether individual rights may not suffer if the interstate-commerce law is revised so that imported liquors will be subject to the State law as soon as they pass the boundary into the State. In reply we may say that the prohibitory law permits, and ever since its enactment has permitted, the sale and purchase of liquors within the State for mechanical, manufacturing, and medicinal uses, and the purchase of liquors without the State as a beverage. Our prohibitory law permits one to buy, transport, store, and consume any kind of intoxicants, but provides a penalty for intoxication. Our law forbids any person from engaging in the business of retailing intoxicants as a beverage within the State, and it requires that one retailing intoxicants within the State for mechanical, manufacturing, and medicinal purposes shall be chosen by the selectmen or the municipal officers as a town liquor agent. Some persons in our State use intoxicants as a beverage, and this right is not questioned by our people or legislature and their customs are not interfered with by our officers. If, by mistake, such liquors were seized in transit, on the supposition that they were intended for unlawful sale, the owner would easily recover his goods by satisfying the officials that the liquors were not intended by him for unlawful sale.

HENRY N. PRINGLE,

On behalf of the Christian Civic League of Maine.

EXHIBIT J.

Resolutions adopted by the Iowa Association of Southern California in annual picnic assembled, 10,000 strong, at Los Angeles, Cal., February, 22, 1904.

Whereas Senator Dolliver and Congressman Hepburn, of Iowa, have introduced bills in the National Legislature, which provide for

giving the several States the authority to protect themselves from the blight and curse of the poison drink traffic:

Resolved, That as loyal Iowans, 10,000 strong, in annual picnic assembled, we express our hearty approval of the legislation proposed by them, and extend to them our grateful thanks for their noble effort in defense of Christian civilization.

Signed in behalf of the association.

O. T. NICHOLS, *President.*
C. H. PARSONS, *Secretary.*

PASADENA, CAL., *February 25, 1904.*

EXHIBIT K.

INDEPENDENT ORDER OF GOOD TEMPLARS,
COLUMBIAN BUILDING,
Washington, D. C., March 8, 1904.

Judiciary Committee, *House of Representatives,*
Washington, D. C.

GENTLEMEN: One hundred thousand Good Templars of this country desire to go on record as favoring very intensely the enactment into law of the Hepburn-Dolliver bill, designed to remove certain interstate commerce obstructions to satisfactory enforcement of the laws of the several States regulating or prohibiting the sale of intoxicating liquors, which bill you have now under consideration.

These Good Templars believe in the strict enforcement of all laws, and especially those having to do with the liquor traffic. They believe that it is but reasonable that the Congress should make it as easy as possible for the States to enforce their own liquor laws without interference by the General Government.

Good Templars believe the provisions of the Hepburn-Dolliver bill, to be just, expedient, practical, and constitutional. They believe that all opposition to the bill emanates from a class of people interested directly or indirectly in the extension of the traffic in intoxicants, and that their selfish wishes should not weigh against the great predominating moral sentiment of the country asking for the enactment of the bill into law.

For the Good Templars of the country, represented by 45 grand lodges, covering nearly every State and Territory of the Union, I plead for favorable action upon the Hepburn-Dolliver bill.

Respectfully submitted.

A. E. SHOEMAKER,
Grand Chief Templar.

EXHIBIT L.

[Established 1871. Cable address, "Woodland" A. B. C. Code.]

Crigler & Crigler, distillers Woodland (sour mash) whiskey.

[We are not in any manner connected with the whiskey trust. Sole proprietors Woodland Registered Distillery, Seventh district, Kentucky.]

COVINGTON, KY., *November 5, 1903.*

Express Agent.

DEAR SIR: The holiday season and the few weeks preceding offer an excellent opportunity for the sale of Woodland whiskey. This year

we are making a special effort to assist our representatives to secure orders by giving away free to all customers our holiday book novelty, which contains a half pint of Col. R. L. Crigler's private stock whiskey, 20 years old. As per enclosed circular, this novelty will be placed in every package of four quarts or more shipped before Jan. 1.

We will also make this unprecedented offer: To any express agent who sends in orders between Nov. 10 and Jan. 1, amounting in all to 100 gallons, we will give an extra bonus of \$15.00, in addition to the regular commission of \$50.00, also an elegant suit of all-wool clothes, made to order, valued at \$30.00, making a total of \$95.00 you will receive for sale of 100 gallons, a commission equalling 95 cents per gallon. The book novelty, which we offer as an extra inducement to customers, will be of great assistance in making sales. Your position as express agent puts you in touch with those who use good whiskey and send away from home for it, therefore, you should be better able, with a smaller amount of effort, to secure orders than anyone else. Knowing you to be reliable we will extend you credit and charge to your account any orders you may wish, or will ship anyone whose account you may guarantee.

We enclose circular of our Christmas club offer, whereby we ship five gallons of Woodland for the price of four, on condition that cash accompanies the order. Your commission on this shipment will be \$2.00, and each one will credit you four gallons toward a 100-gallon sale.

In order to save express charges with the first shipment of four quarts or more going to your town, upon receipt of the enclosed card we will send you for sample purposes, absolutely free, one full quart of 12-year-old Woodland.

Orders are best secured by personal solicitation, but if you will give us the names of whiskey users in your locality (omitting merchants) we will solicit their holiday order and send them circulars of the book novelty. Any orders received will be placed to your credit.

Circulars descriptive of the book novelty and other stationery needed will be mailed you promptly on request.

Hoping to receive an early reply, and trusting you will take advantage of our liberal offer, we are,

Very respectfully,

CRIGLER & CRIGLER.

SPECIAL HOLIDAY OFFER.

\$95.00 commissions paid on 100 gallons so.d as follows:

Regular commission	\$50.00
Special commission	15.00
Suit clothes, valued at	30.00
Total of	95.00

Get up a club order and secure

4 QUARTS WOODLAND FREE.

To anyone who will get up an order among their friends for four gallons (16 quarts) and send us fifteen dollars (\$15.00), cash with the order, we will give them *free*, besides the 16 quarts, four quarts extra, making a shipment of five gallons (20 quarts)

for the cost of four gallons, shipped by express, all charges prepaid, in one large box, free from marks to indicate contents. The box will include the assortment here illustrated.

[Cut of articles named below.]

For \$15.00 cash with order.

For \$15.00 cash with order.

HOLIDAY CLUB OFFER

will be sent to anyone before Jan. 1 who sends the amount, \$15.00 cash with the order, and consists as follows:

15 full quarts 12-year-old Woodland whiskey.

5 full quarts Old Private Stock, 20 years old.

5 book novelties, each containing one-half pint Old Private Stock.

5 whiskey glasses and 5 corkscrews.

The club order complete contains five gallons of whiskey besides the five half pints Private Stock whiskey.

Use order blank on other side and give names of those who will secure part of the shipment.

This club offer, which expires January 1, will not be sent C. O. D., but only to those who send cash with the order. This price is *net*; no discounts or deductions whatever from this price.

CRIGLER & CRIGLER, *Distillers, Covington, Ky.*

[Reverse side.]

Five gallons for the price of four.

ORDER BLANK.

Messrs. CRIGLER & CRIGLER, *Distillers, Covington, Ky.*:

Inclosed find \$15.00 (fifteen dollars). Please ship by _____ Express Co., all charges prepaid, the holiday club offer as illustrated, to consist of fifteen full quarts 12-year-old Woodland whiskey, five full quarts Old Private Stock, 20 years old, five book novelties, each containing one-half pint Old Private Stock, five whiskey glasses, and five corkscrews, to the following address:

Name.....
Express office.....
County..... State.....
P. O. address.....

This shipment complete will go forth by express, all charges paid, in one large box, free from marks of any kind to indicate contents.

The shipment will be divided on arrival as follows:

Name.	Address.
.....quarts for.....	
.....".....	
.....".....	
.....".....	
.....".....	

Five gallons for the price of four.

FREE—OUR HOLIDAY NOVELTY—FREE.

[Cut of novelty book.]

With every case of Woodland shipped before January 1.

This novelty book will be placed in every case of Woodland whiskey consisting of four quarts or more shipped before January 1. The novelty is in exact imitation of a real book, made of heavy cardboard, bound in cloth with title, etc., lettered in gold, and will deceive the most observing. Upon opening the book you find instead of dull reading matter a very active half pint of Colonel R. L. Crigler's old private

stock whiskey, 20 years old, labeled in appropriate holiday style. This book and bottle of whiskey will itself make an elegant Christmas present and a great deal of sport may be had with it during the holidays.

Price list of Woodland whiskey, 12 years old, by express, all charges prepaid.

Four full quarts	\$3.85
Six full quarts	5.75
Eight full quarts	7.65
Twelve full quarts	11.50

Shipped C. O. D. where express companies will deliver that way.

Three per cent off these prices for cash with order.

SPECIAL OFFER.

To any representative sending us orders between Nov. 10 and Jan. 1, amounting in all to 100 gallons, we will give

Regular commission	50 cts. per gallon.
Special holiday commission	15 " " "
Elegant suit of clothes	30 " " "

A total commission of..... 95 cts. per gallon.

Equivalent to \$95.00 for 100 gallons.

The suit of clothes is of all wool material and made to order by H. Eilerman & Sons, the largest merchant tailors in Covington, with whom we have a special yearly contract to supply us with the best they can make. They will send you measurement blanks with full instructions and as many samples as desired to select from. A perfect fit is guaranteed. We can refer to agents who have secured suits and they will gladly tell you of their high quality and fit.

This is the most remarkable offer we have ever made to further the sale of Woodland, but it is our desire to have representatives make all the money they can during that period of the year when every one will use more or less whiskey. As an extra inducement between Nov. 10 and Jan. 1 we will give each customer gratis with every shipment of four quarts or more our book novelty, which contains one half pint of Col. R. L. Crigler's Old Private Stock Whiskey, twenty years old.

Our regular commission is 50 cents per gallon, and the 15 cents additional and suit of clothes are only given on the following conditions:

1. That orders for 100 gallons must be sent in between Nov. 10 and Jan. 1.
2. This extra commission will only be paid to those whose orders amount to 100 gallons during this time. On less quantities only the regular commission of 50 cents per gallon will be allowed, as well as premiums from list A, as heretofore.
3. This offer holds good only to Jan. 1 and no longer.

CRIGLER & CRIGLER, Distillers Woodland Whiskey, Covington, Kentucky.

[Reverse side.]

We desire to assist representatives in every manner possible, and if you will give us the names and addresses of those who use good whiskey in your locality, we will be pleased to write them, soliciting their order for the holidays and sending them circulars descriptive of our holiday book novelty. Any orders received will be placed to your credit and full commission allowed you.

Let us know what circulars, order blanks, literature, etc., you may need and same shall be sent at once.

We want names of private consumers only. Don't send names of merchants, firms, or corporations.

Name.	Town.	State.	County or st. address.
.....
.....
.....
.....

Additional blanks supplied.

EXHIBIT M.

Arguments for the Hepburn-Dolliver bill.

J. C. THOMS, M. D., Seattle, Wash.

First. When any portion of our State expresses by vote the desire to exclude liquors we ought not to be compelled to tolerate people of another State shipping liquors into such town or county.

Second. The manufacturers of liquors in our own State are obliged to obey the expressed will of the people in such localities, and we should not give a greater privilege to people outside of the State engaged in the liquor traffic.

Third. The liquor men have money enough to make themselves perniciously active against such a measure, while the vast majority making up the bone and sinew of our country—the farmer and tradesman—go quietly on about their everyday duties. It is these, who, through me, entreat you to urge the immediate passage of the bill.

EXHIBIT N.

RICHMOND, IND., February 29, 1904.

MY DEAR BROTHER DINWIDDIE: As an American-German, serving for more than ten years a German congregation of more than 700 communicant members, and before my coming to Richmond being traveling secretary in the Nebraska and German-Nebraska synods for over seven years, I am certainly allowed to send you a word of protest when some of us Germans are constantly included with the whisky and beer drinking, as well as Sabbath-breaking Germans, who are indeed a disgrace to our nation. I am speaking for a large portion in the Wartburg synod, for the German-Nebraska synod, as well as for many of the Germans in our English synods, like the four congregations in Olive Branch synod, that we find thousands of them who are not only against this slanderous representation of our people, but are positively for temperance. May God speed the day when we shall no longer have to suffer from such false representation. I hope the Hepburn-Dolliver bill will be successful.

Very respectfully,

CONRAD HUBER,

Pastor St. Paul's German Lutheran Church,
Richmond, Ind.

EXHIBIT O.

[Telegram.]

COON RAPIDS, IOWA, March 3, 1904.

Dr. E. C. DINWIDDIE,

32 Bliss Building, Washington:

Citizens' mass meeting, Coon Rapids, unanimously urge passage Hepburn-Dolliver bill.

STAKESBURY LAMSON.

Rev. T. B. TURNER.

STATEMENT OF HON. SWAGAR SHERLEY, OF KENTUCKY.

MR. SHERLEY. Mr. Chairman and gentlemen of the committee, I want to be perfectly frank in saying that my attention to this bill and my original opposition to the bill grew out of the fact that I represent a district that is largely engaged in the manufacture and exportation of distilled spirits. Perhaps my Congressional district is the largest district in some respects in the country. Certainly the Louisville market is the chief market of the world in regard to whiskies. But I would be equally unfair to myself and equally unfair to this committee if I was to base my opposition to this bill solely upon the ground that it affects alcoholic liquors.

In my judgment there is involved in this bill a proposition as fundamental and as far-reaching in regard to the organic nature of our Government national and State, as any possible legislation, and this committee would not deserve its title of Judiciary Committee if it declined to consider, not simply the question of the advisability of a law of this kind, but the further and more fundamental question of the power of Congress to pass the law.

It is an interesting fact that our present Government owes its existence largely to the trouble that grew up in the days of the old confederation in regard to interstate commerce. I took occasion to state, in opposing the Hepburn pure-food bill, which was an attempt, in my judgment, to hamper interstate commerce, that the Philadelphia convention, which adopted the present Constitution, was called into existence as a result of the labors of the Annapolis convention, which had itself been brought about by the original convention called by Maryland and Virginia to formulate some plan relative to commerce between those two States, and the provision giving Congress power over interstate and foreign commerce was put into the Constitution without practically any discussion, so apparent was the need of national control of commerce.

Yet, strangely enough, from the beginning of the present Government down to this good hour there have been differences of opinion as to the power that was given to the National Government under that provision which says that Congress may regulate commerce with foreign nations, with the Indian tribes, and among the several States.

One contention has been that the power of Congress was exclusive and left no power in the State. The other position has been that the power of Congress was not necessarily exclusive of the power in the States, and in the arguments and opinions dealing with these conflicting theories there has been an unfortunate use of a phrase, and that phrase is "concurrent power." There never has been, there never could be, such a thing as the concurrent power of the States and the nation in regard to interstate commerce, and the decisions will amply bear out that statement. There has been, as to some subjects of interstate commerce, a subservient power in the State which was free to act until Congress did act itself. But if the powers were concurrent it would mean that the State's power should not bow any more to the national power than the national power should bow to the State power. If there was such a thing as a concurrent power the doctrine of the silence of Congress, which I shall come to in a moment, could have no force, because it

would not matter whether Congress expressed its will or did not express its will. If the State's power was concurrent it would follow that it was coequal and that both the State and the nation could legislate and each would have the right to maintain that its law was to be enforced.

The real contention and the real result of all the decisions, when you look not simply to what was said, but to what was actually decided, is this: That where the question is one of a national nature, then the power of Congress is exclusive, but where the question is simply of a local nature, then there is power in the State to act, provided Congress has not by its own act governed the matter. In other words, when it comes to a question like pilotage or harbor regulations, then the State can go ahead and pass its law, and that law will be enforced until Congress undertakes to regulate in regard to such matters, and then the State law, even as to them, must bow to the national law, in accordance with that provision which makes a law passed in pursuance of the Constitution of the United States the supreme law of the land.

I want to review very briefly a few of the cases decided by the Supreme Court to show in a measure just what was decided and what may be said to be the conclusions of the court at present.

If I should undertake to read the decisions themselves I would have to read some thousand pages, because there is at least that much printed matter on the specific questions involved in this case, without referring to the cases in regard to interstate commerce that had no relation to alcoholic liquors.

In *Gibbons v. Ogden*, which was the first case, and perhaps the most famous case of them all, the court decided this: That a State regulation of foreign or interstate commerce actually in conflict with a law of Congress is void.

It was argued by Mr. Webster, and by all the counsel who were against the constitutionality of the State law, that the law would be void whether Congress had acted or not, and the reasoning of Chief Justice Marshall goes to the extent of saying that since the power of Congress over interstate commerce is an exclusive power, that therefore the State law must be unconstitutional, irrespective of its conflict with a specific Federal law. But the exact point decided was not that. He said that it was not necessary to decide that point, because here was a case where the National Government had acted anyway and the State law was in conflict with the national law, and therefore there could be no doubt but that the State law was unconstitutional.

In the case of *Brown v. Maryland* (12 Wheat., 419), the court decided that a State law imposing a license to sell on an importer was unconstitutional, being in conflict with the Federal law. In that case also the reasoning of the court points to the inevitable and logical conclusion that the power of Congress is exclusive, and that the action of the State is necessarily unconstitutional; but in that case, as in the *Gibbons v. Odgen* case, the exact point decided was that a law passed by a State actually in conflict with a law passed by Congress was unconstitutional, and went no further. The dicta of both of those cases seems to be unanswerable in its logic that the power of Congress is exclusive, but I want to present what was decided and not what was said.

The next case was the case of *Willson v. Blackbird Creek Marsh Company* (2 Pet., 245), and there, apparently, the Supreme Court reversed itself. It did not reverse itself in regard to the actual decisions

but the reasoning in that case is somewhat in conflict with the reasoning of the two former cases. There was a State law passed authorizing the erection of a dam across a navigable stream, and the advocates of the exclusive theory contended that that law was unconstitutional. The Supreme Court held that it was constitutional on this ground: That the law related to that feature of interstate commerce which was not national in its character and which did not require a uniform rule, but which might be dealt with locally, and that in so far as Congress had not said anything, the State had the right to legislate; and right here I want to make this point plain. That the right of the State to so legislate is not owing to any right to regulate interstate commerce, but is the right that it has in other matters to legislate in regard to the territory over which its sovereignty extends; and the absence of national legislation simply leaves the State completely free to legislate as to the things within its domain, not by virtue of any power it has over interstate commerce, because it has none, but because of its other powers. In this particular case the legislation was upheld because relating to commerce only in its local aspects and not in conflict with any existing Federal law.

Mr. LITTLEFIELD. What justice delivered that opinion?

Mr. SHERLEY. That decision was rendered by Justice Marshall and, as I have said, was apparently a decision the reasoning of which was somewhat in conflict with the reasoning in the two former cases of *Gibbons v. Ogden* and *Brown v. Maryland*.

Mr. LITTLEFIELD. Were the other cases referred to, discussed, distinguished, and criticised?

Mr. SHERLEY. They were distinguished. Commerce in this case was affected but locally and in the other cases fundamentally, and they were cases where Congress had acted; but the logic of those opinions, if carried out, perhaps might have suggested a different decision in the Blackbird Creek case.

Then came the case of *New York v. Miln* (11 Pet., 102) which held that a law requiring masters of vessels to make a report of the name, place of birth, etc., of every person brought as a passenger unto the State of New York from other States or foreign countries, was constitutional, being the exercise of police power and not in any way regulating commerce. The court practically said in its dicta that the police power in the State is not limited or confined by the power of the National Government in regard to interstate commerce, but the facts of that case were simply this: The law required that masters should make a report of the passengers that came in as to who they were, so that the State might have some record in regard to immigration and might protect itself against pauper immigration, and the judges in deciding that case held—and it seems to me rightfully—that the act in question was in no way an interference with interstate commerce nor could be considered to really touch interstate commerce at all; that it was simply a regulation of a matter local entirely and not interstate or foreign.

Then came the License cases (5 How., 504). In the License cases it was held that certain regulations of the States of New Hampshire, Massachusetts, and Rhode Island requiring a license to sell liquors imported from another State were valid. Each of the judges concurring in the judgment rendered, delivered a separate opinion, and the reasons in support of the conclusion of the court are widely diver-

gent. The chief question concerning which the judges differed was as to whether the regulations involved in that case were really regulations of interstate commerce or not. And it is to be noted that, in the opinion of several of the judges, the distinction is clearly drawn between a prohibition to import and a prohibition to sell after importation. Mr. Justice Woodbury, in his opinion, among other things, said:

It is manifest, also, whether as an abstract proposition or practical measure, that a prohibition to import is one thing, while a prohibition to sell without license is another and entirely different. The first would operate upon foreign commerce on the voyage.

The latter affects only the internal business of the State after the foreign importation is completed and on shore. The subject of buying and selling within the State is one as exclusively belonging to the power of the State over its internal trade as that to regulate foreign commerce is with the General Government under the broadest construction of that power. The idea, too, that a prohibition to sell would be tantamount to a prohibition to import does not seem to me either logical or founded in fact, for even under a prohibition to sell a person could import, as he often does, for his own consumption and that of his family and plantation, and also, a merchant extensively engaged in commerce often does import articles with no view of selling them here, but of storing them for a higher or more suitable market in another State or abroad.

He then states that the licenses involved in those cases were neither regulations of interstate commerce nor of foreign commerce, and holds that whether such laws are to be classed as police measures or as regulations of the internal commerce of the States, or as taxation merely, is immaterial so long as they do not affect interstate or foreign commerce until after the subject-matter of that commerce touches the soil or waters within the limit of the State.

I have called attention expressly to these views because the license cases in what they actually decide go perhaps as far as any case in the rights that they give to the State government to pass laws affecting interstate commerce, and yet it is apparent that there was noted a clear line of distinction between the right to sell and the right to import, a distinction that in my judgment is vital in considering the constitutionality of the proposed law. Some of the opinions, however, in the license cases are directly opposed in their reasoning to that set forth in *Gibbons v. Ogden*, and *Brown v. Maryland*.

Mr. LITTLEFIELD. Were those cases discussed and distinguished?

Mr. SHERLEY. They were discussed in some three or four hundred pages and a man can find an expression in these different cases as to any proposition in regard to interstate commerce law that you want. I could take the time of this committee for hours reading an expression by one judge who has reached the conclusion that the State had reserved all of its powers and another who has reached the conclusion that the National Government had stripped the State of every power, but it is not what the judges have said but what they have decided which constitutes the law of the land.

Very shortly after the decision in the License cases came the Passenger cases (7 How., 283), which presented the question of the constitutionality of laws of the States of Massachusetts and New York requiring masters of vessels to pay to the health officers of the State board a certain sum for each passenger landed. The court held such laws unconstitutional, and abandoned in a large measure the ruling laid down in the License cases and apparently adopted the doctrine of exclusive power of the National Government.

Then came the case of *Cooley v. Board of Wardens* (12 How., 299),

and this case is apparently a compromise between the position of those advocating exclusive national power and those advocating the reserved power of the States. The question presented was the constitutionality of the law of Pennsylvania establishing regulations of pilots and pilotage for the harbor of Philadelphia. The court sustained the validity of the State law and laid down this rule, which I believe to be a safe rule to follow to-day.

When the nature of a power like this is spoken of, when it is said that the nature of the power requires that it should be exercised exclusively by Congress, it must be intended to refer to the subjects of that power and to say that they are of such a nature as to require exclusive legislation by Congress. Now, the power to regulate commerce embraces a vast field, containing not only many but exceedingly various subjects quite unlike in their nature, some imperatively demanding a single uniform rule, operating equally on the commerce of the United States in every port, and some, like the subject now in question, as imperatively demanding that diversity which alone can meet the local necessities of navigation. Either absolutely to affirm or deny that the nature of this power requires exclusive legislation by Congress is to lose sight of the nature of the subjects of this power and to assert concerning all of them what is really applicable but to a part. Whatever subjects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress.

If this rule is borne in mind and applied right on down through the various cases, you will find that a great deal of the difficulty caused by reason of the dicta of the court vanishes and is lost sight of. After that case was decided the old controversy was in a measure dropped, and the question that the court came to consider was as to the nature of the interstate commerce that the particular law affected, and if it was national they held that the State law could not be held to be constitutional, and if it was local they held that the State law was a valid exercise of the powers of the State.

Then came the case of *Bowman v. Railway Co.* (125 U. S., 465), which expressly decided this question: That the shipment of alcoholic liquors from one State into another State could not be prevented by a State law. That was followed by the case of *Leisly v. Hardin* (135 U. S., 100), which went a step further and followed up the doctrine which always had been the law in regard to foreign commerce, but which had expressly not been the law in regard to interstate commerce, that the right to import carried with it the right to sell. The *Bowman* case decided that you had the right to import and that the State could not interfere with it. Of course, at that time there was no national legislation warranting the State to interfere. You had the silence of Congress, and they held that the silence of Congress as to a national matter indicated that that commerce should remain free, whereas the silence of Congress as to a local matter indicated the will of Congress that the State might legislate. In other words, they gave just opposite meanings to the inaction of Congress according as the law involved related to a subject, local or national. The *Bowman* case decided expressly that the shipment of alcoholic liquor from one State to another could not be prevented by a State law, and then the *Leisly* case decided that not only could the importation not be prevented, but that the sale could not be prevented.

Mr. LITTLEFIELD. In the original package?

Mr. SHERLEY. Yes, sir; and in deciding that they overruled the *Pierce v. New Hampshire* case, which was one of the License cases, and in that case the court, as I have just shown, held that the right to

sell was not an inherent part of the right to introduce goods from one State into another. The Pierce case was directly opposed to the *Brown v. Maryland* case. The Brown case related simply to foreign commerce, whereas the Pierce case related to commerce between the States.

The Leisly case held that commerce between the States was upon the exact same ground that foreign commerce was, and permitted not only the importation of, but also the sale the first time in the original package. That decision, in my judgment, is open to severe criticism, and it did cause a great deal of criticism because of its failure to recognize the distinction between the right to sell and the right to import. I do not believe that it follows as a matter of logic, certainly in regard to interstate commerce, however it might be in regard to foreign commerce, that the right to import carries with it the right to sell. In foreign commerce that might be so, because the importer not having any reason to bring things into the country except for the purpose of selling them, his right to import would be practically annulled if you did not give him the right to sell, but in regard to interstate commerce that is not necessarily so.

A man may want to import into a State for his own use without regard to his right to sell, and it seems to me that the right to sell is an incident and not a fundamental aspect of interstate commerce; and again I wish to say that if this committee will bear that in mind, that distinction between selling and the right of importation, they will come to the one point that, it seems to me, the whole proposed present law turns upon.

The court, unfortunately, in those cases went to talking, and the judges said a good many things outside of what they decided. They decided exactly what I have said, but in deciding that, they intimated that Congress could break its silence and by an affirmative statement permit the State to do that which they had just decided it could not do before, an absolutely illogical position, because if the power of Congress was exclusive as to interstate commerce where the subject was national, it follows that by the very meaning of the word exclusive there is carried the idea of an absence of power in the States; and Congress, as we all know, can not create power in the States. They may remove obstacles from the State's right to exercise another power, but they can not create a power in the State, and that has been decided repeatedly and needs no argument. The court, however, said Congress could give permission, and Congress very quickly took advantage of that suggestion and passed the Wilson law.

The Wilson law came up for construction as to its constitutionality and as to the constitutionality of the Iowa law in the Rahrer case, and the court in that case said a great deal, but did not decide very much. It decided this proposition: That Congress had the power to rob interstate commerce of its interstate character before the sale instead of allowing it to have that interstate character until after the sale. In other words, the effect of the Wilson bill was simply to put the law back where it was in regard to interstate commerce before the Leisly decision, that decision, as I have stated, having held as to interstate commerce that the right to import carried the right to sell. Congress, by the Wilson bill, put the law as to interstate commerce back where it was before that case was decided and said that the right to import did not carry the right to sell.

Now, this law came up again before the Supreme Court in the Rhodes case, and there it was contended that the law not only prohibited the right to sell, but prohibited the right to import, and the Supreme Court decided that a proper construction of the words of the act limited it to the right to sell and did not touch the other right to import, and in deciding that case the court not only expressed the idea that it had not decided the constitutional question of whether if it had gone to the extent contended for it would have been constitutional, showing in the mind of the judge rendering that decision that there was a serious question as to such power being possessed by Congress, but it also makes a distinction which is very pertinent. It speaks of the right of sale as being an incident of interstate commerce, but not being one of the fundamental aspects of interstate commerce, the distinction that I made a few moments ago.

In other words, it may be that Congress can say that we will, by affirmative legislation, decide that goods going into a State shall become intermingled with the rest of the property of the State so as to be subject to the State law at an earlier period than would happen ordinarily, but to say that Congress can say further that a State by its law shall be given the power to reach out into an adjoining State and prevent the goods of such State coming within its borders, and that a contract which has been made there shall not be enforced, is an entirely different proposition, and that is the proposition you are confronted with by the proposed law. That bill changes the present law to this extent, that it uses the words "the boundary of" and then "before and after delivery." Those six or seven words are the only changes between the Wilson law as it now stands and this proposed law, excluding the second section, which is largely declaratory of the first.

In other words, this is an effort to make the Wilson law mean what the advocates of the prohibition laws of Iowa contended it meant in the Supreme Court and what the Supreme Court decided it did not mean. What will be the effect of this law, if passed? Of course one effect of the law, as has been stated by the gentleman who preceded me, would be to transfer the storm center from Washington to the various State capitals.

Mr. THOMAS. Is it your contention that Congress has not the constitutional power to prohibit the transportation of intoxicating liquors from one State into another?

Mr. SHERLEY. No, sir. I do not say that, because the Supreme Court has expressly decided the contrary in the lottery case. The Supreme Court held that lottery tickets were articles of commerce; rather an unusual decision, but it is the law. They declared that a lottery ticket was an article of commerce and being such, the power of Congress to regulate included the power to prohibit; and I contend right here and frankly admit that you can write a national law which will prohibit the transportation of liquors; but that is not what you are trying to do under this bill. You are undertaking to lift the ban that is placed upon the States in regard to interstate commerce and permit them to legislate as to interstate commerce. If that be not the purpose of this bill there is no use of passing it, because, under the law as it now stands and as construed in the Rahrer case, any State has the power the moment imported alcoholic liquors are delivered to the

original consignee to treat them the same as if they had been manufactured in the State and not shipped in.

In other words, they can say to the consignee, "You shall not consume it; you shall not sell it; you shall not give it away." They have all the power they can possibly have over any subject the moment it reaches the hand of the consignee under the present law, and I believe there are plenty of ways by which the States to-day can make effective their laws without undertaking to go out of the province of State sovereignty into that of national sovereignty and to give their laws extra-territorial effect. When whisky comes into the State of Iowa the State of Iowa gets absolute jurisdiction and the National Government loses absolute control over it; then the State can do as it pleases, and can make its prohibition effective if it wants to.

Mr. LITTLEFIELD. Those practical difficulties do not exist?

Mr. SHERLEY. I do not say they do not exist, but I do not consider that the practical difficulties in a case have the right to make this body undertake to disregard that great line of cleavage between what control belongs to the nation and what to the State. You are making a precedent that is most dangerous.

Mr. LITTLEFIELD. It was held in the Leisly case that the original package was an essential feature of interstate commerce?

Mr. SHERLEY. That was based on the principle of the right to sell in the original package.

Mr. LITTLEFIELD. That involves the original-package proposition?

Mr. SHERLEY. No; the original-package proposition was involved in the Bowman case, which held that you had the right to import in the original package.

Mr. LITTLEFIELD. The Leisly-Hardin decision held that the right to sell was an essential feature of interstate commerce?

Mr. SHERLEY. Yes, sir.

Mr. LITTLEFIELD. And for that reason no State law could prohibit the sale?

Mr. SHERLEY. Yes, sir; but I contend that they have the power now to prevent the sale.

Mr. LITTLEFIELD. If you can eliminate one element of interstate commerce by transportation, what is the matter with the other elements?

Mr. SHERLEY. The element you are eliminating in regard to the sale is not a real element, but only an incident of interstate commerce. There can be interstate commerce without the power in the consignee to sell, but there can not be interstate commerce without the power to import. One goes to an incident of interstate commerce and the other goes to the commerce itself, and my position is that Congress can not legislate so as to give to the States the power to regulate interstate commerce, however much they may be able to lift the restrictions now on the States so as to make a subject of interstate commerce lose its interstate character at an earlier period than it would otherwise. That point is clearly shown in the wording of the decision in the Rahrer case. The Rahrer case in effect says: "We do not create any rights in the State; we simply lift the ban of the National Government which it has by virtue of its regulation of interstate commerce and permit the State laws to operate."

Mr. LITTLEFIELD. As to an element of interstate commerce?

Mr. SHERLEY. As to an incident.

Mr. LITTLEFIELD. Did the decision call it an incident rather than an element of interstate commerce?

Mr. SHERLEY. The Rhodes case, in reviewing the Rahrer case, did. The court used this exact language:

While it is true that the right to sell free from State interference interstate-commerce merchandise was held in *Leisly v. Hardin* to be an essential incident to interstate commerce, it was yet but an incident, as the contract of sale within a State in its nature was usually subject to the control of the legislative authority of the State.

On the other hand, the right to contract for the transportation of merchandise from one State into or across another involved interstate commerce in its fundamental aspect, and imported in its very essence a relation which necessarily must be governed by laws apart from the laws of the several States, since it embraced a contract which must come under the laws of more than one State. The purpose of Congress to submit the incidental power to sell to the dominion of State authority should not, without the clearest implication, be held to imply the purpose of subjecting to State laws a contract which in its very object and nature was not susceptible of such regulation even if the constitutional right to do so existed, as to which no opinion is expressed. (170 U. S., p. 424.)

The question here asked by the court and left undecided must, in my humble judgment, be answered in the negative.

While Congress can lift its arm from the State so as to give to it the free exercise of the power it would naturally have within its State lines, it can not give to the State the power to go out beyond the State limits and regulate interstate commerce, and I believe that to be the true distinction, the distinction that is so strongly intimated in the Rhodes decision.

Of course, this is a very close question, and I am free to confess that it is one concerning which there can be readily differences of opinion. The point that I make is this: That the Wilson law says, as construed by the Supreme Court, that the interstate character of alcoholic liquors shall be lost before instead of after the sale.

It did not go to the vital aspect of interstate commerce. That aspect of it which is vital and fundamental is the right of importation from one State to another, and it does not seem to me that the right of importation necessarily carries with it the right to sell, although it was so declared back in the *Leisly* case in regard to interstate commerce, and in regard to foreign commerce in the case of *Brown v. Maryland*. What you are asked to do here is to absolutely prevent interstate commerce, not by a national law, but by permission to the State to prevent it. The State has no power over the fundamental aspects of interstate commerce.

It has power over those things which are incident to it, which are local to it. You can not make any regulations in regard to pilotage; you can not make any regulations in regard to any sort of tax or fee, or anything else, without in some way affecting interstate commerce; that is, if it applies to anything outside the State at all. There is a vast distinction, however, between affecting interstate commerce in that sense and affecting it in the sense of absolutely preventing its existence. Congress itself can prevent its existence, and Congress should do it if it wants to be honest and believes it ought to be done.

Mr. SMITH. Does not the sale of an article imported into a State bear about the same relation to interstate commerce that the manufacture of the article does?

Mr. SHERLEY. In this connection it certainly does.

Mr. CLAYTON. That was decided in the sugar case?

Mr. SHERLEY. Yes, sir.

Mr. LITTLEFIELD. What is the right to import without the right to sell?

Mr. SHERLEY. It is a very considerable right, for you may have the right to sell in the State where the goods are made. I live, for instance, in the State of Iowa, and I go into the State of Kentucky, where, as I have heard it said, the whisky is so good that intemperance becomes a virtue, and I conclude that I want to get some of that whisky and carry it back to Iowa. I make a contract in the city of Louisville by which the manufacturer is to ship to me, in the State of Iowa, some whisky. That is a very valuable right to me, even if it does not carry with it the right to sell the whisky in Iowa.

Mr. LITTLEFIELD. But as a business proposition, is the right of import of any substantial value without the right to sell?

Mr. SHERLEY. Unquestionably, without the right to sell in the place where imported, because the right to import may be exercised after the sale has already been made in another State. In other words, you make your contract of sale in the State of Kentucky and you carry out your importation by sending it over to the State of Iowa.

Mr. LITTLEFIELD. You carry it through the State of Iowa?

Mr. SHERLEY. Into the State. The mistake you make is in supposing that the only sale that can be made is one made after delivery. Now, the import sale, the sale that really gives commercial value to the commodity, is the sale that is made before delivery. A person may contract in another State for the purchase of any particular commodity and it becomes interstate commerce afterwards. Of course there would be no value in the right to import if you could not buy and sell at either end of the line.

Mr. LITTLEFIELD. The sale takes place at that point quite largely, although purchased for shipment into another State?

Mr. SHERLEY. Yes, sir; the sale becomes completed, for instance, in Kentucky, and if this proposed law is passed and is constitutional, the effect of it will be to say that while you can buy if you want to in another State, one of the incidents of the contract—that it shall be shipped to you into the State of Iowa—shall not be carried out, and then you have the beautiful spectacle of one State absolutely annulling the law of another State, and that is what I mean by saying that this law gives an extra territorial effect to the laws of the States.

Mr. LITTLEFIELD. Does not the law substantially do that now? I understand your illustration, which is entirely sound; although liquor is sold in Kentucky to be delivered in Iowa, the sale takes place in Kentucky. Now, does not the law that deprives the consignee in Iowa of the right to sell in original packages impair the commercial value?

Mr. SHERLEY. Yes, sir; but does not destroy it.

Mr. LITTLEFIELD. Do you contend, as a commercial proposition, that the main purpose of the transportation from Kentucky into Iowa is not that it may be sold, and that when the law prevents it from being sold the main purpose of the consignee is not defeated?

Mr. SHERLEY. If your premises were true these people would not be here advocating this present law. They think there is a distinction. They think it interferes very materially with interstate commerce, and if they did not think so they would not be here advocating a proposition that goes further than any proposition ever submitted to the national legislative body.

Mr. PARKER. Have you considered the effect of the Wilson law on

such a case as this? Suppose the Iowa law was in New York City, where there are large jobbing houses and where a jobbing house purchases a large quantity of liquor and then ships it to another State; what about that second sale to be exported somewhere else?

Mr. SHERLEY. I am inclined to think, without having looked at that specific point, that it would be treated as a separate transaction, so that the jobber sending on his goods into other States would be considered as beginning a new interstate transaction which would be entitled to the same privileges as if there had been one transaction, provided, of course, the laws of New York permitted the jobber to hold the liquor received from another State and did not immediately confiscate it after receipt by the jobber.

Mr. PARKER. Does your argument go so far as to say that the State law can not prevent a purchase in one State to be carried into another and then shipped into a third State?

Mr. SHERLEY. I am inclined to believe that, for instance, alcoholic liquors—to make the case specific—bought in Kentucky and brought into Iowa and delivered to an Iowa consignee, could by the law of Iowa be prevented from being exported out of Iowa into another State.

Mr. PARKER. You think it would?

Mr. SHERLEY. Yes, sir; for this reason, that the very moment the interstate journey is ended, that moment the property passes from under the protection of the national law obtained by that provision giving Congress power to regulate commerce and becomes a part of the general property within the State. But this question might come up, as to whether one State could prevent the exportation of articles of commerce to another State, but that would be under an entirely different provision of the Constitution.

But laying aside that question, which has no bearing here, I am inclined to think that the moment whisky came in there and became absolutely a part of the rest of the wealth of the State, that then the laws of the State could seize it and absolutely prevent its use or sale or consumption in any way.

Mr. PALMER. What are your clients' fears based on, that Congress will violate the Constitution?

Mr. SHERLEY. I have no clients. I am a member of Congress doing my duty, as I think, to uphold the Constitution of the United States.

Mr. PALMER. Your constituents, then, because you stated that you represented one of the largest distilling districts in Kentucky.

Mr. SHERLEY. My constituents object to this law naturally, that is, my whisky and beer constituents, because it does interfere with their trade. The National Government recognizes that trade and raises a tremendous revenue out of it, and it ought to have the courage and honesty to stand in the open and either legislate so as to prevent alcoholic liquors being made at all, by putting the tax so high as to be prohibitory, or it ought to have the courage to protect the men engaged in that pursuit, in ordinary common fairness.

That is my position aside from the question of the legal right. But this committee must determine and has no right to shirk the responsibility as to whether a law is constitutional and what is going to be the effect if you pass it. If you establish this precedent Congress can have the same power as to any article of interstate commerce. Take, for instance, tobacco, why should not Congress pass a law prohibiting

practically the importation of tobacco from one State to another? You know the cry that goes out in regard to cigarettes, and in regard to smoking generally. There are people who believe just as strongly in regard to the destruction of the nation from cigarette smoking as from alcoholic liquor drinking. Why should not Congress pass a law to give the States absolute power to prevent interstate commerce in regard to tobacco, and then, when you have gotten through with tobacco, why should you not take up a number of other things?

There are a great many people in this country who believe that the trusts are going to absolutely destroy America. We all know that the State of New Jersey has a little habit of incorporating trusts and giving them the power to do whatever they want in any State but New Jersey. We have suffered from it. Why should not this great body pass a law which will say to the States that they may prohibit trust-made goods coming into the State, the same as they may now prohibit trust-made goods being manufactured in the States?

Mr. LITTLEFIELD. Why do you not do that in Kentucky now and drive such corporations out of Kentucky?

Mr. SHERLEY. Kentucky can prohibit them doing business, but it can not prohibit their goods coming in. If you are going to legislate this power, give us the power to prevent trust goods coming in, and the State of Kentucky will be able to take care of the matter.

Mr. LITTLEFIELD. What good would there be in sending commodities into Kentucky if they could not be disposed of? They might export them out.

Mr. SHERLEY. There would be this particular good, that they would have the right to make the sale in advance and send direct to the consumer, and until you pass a law as to commodities other than alcoholic liquors, going as far as the Wilson law already has gone, they would have the power to sell them within the State.

Now, in regard to alcoholic liquors, it seems to me that the logic of this case is simply to say this, we will let the States go back into that condition of commerce that existed prior to the formation of the National Government, and let them under the police powers, by their desire to do what they think necessary or convenient, so legislate as to prevent free intercourse between the States. But the precedent that would be established would doubtless lead to legislation affecting other articles of interstate commerce. It would simply become a question of the strength of any particular State in the National Congress to obtain legislation affecting any other commodity that it might desire.

And while the Vance case, which was decided at the same time as the Rhodes case, holds that no State might directly discriminate against the products of another State it would be practicable to indirectly discriminate; for instance, a State not manufacturing a lard product made out of cotton-seed oil might decide to prevent such product of a sister State being brought into competition with the lard manufactured within its own borders from animal fat. If it was powerful enough to obtain from Congress a law permitting it to treat lard made from cotton-seed oil shipped into the State the same as if created there, it could then by a sufficient tax practically prevent the shipment, or could entirely prohibit it on the ground that such product was injurious to health, and could thereby create a monopoly from the lard made from animal fat.

This is but a crude illustration, but it does illustrate what is possible to be done by the States should Congress decide to follow the dangerous precedent set forth in this case, having in mind that in the course of time every precedent, even though established for a good purpose, is taken advantage of for some less worthy object. It seems to me that this committee should hesitate, even if it should determine that Congress has the right to pass such a law, to recommend its passage. I have confined myself to the question of the constitutionality of the proposed measure, but in conclusion I can not refrain from saying that in my humble judgment no legislation has done more to corrupt the morals of the people than the prohibition legislation attempted from time to time. If anything is a proved fact, it is that you can not restrict the personal liberty of the individual by prohibition laws, and that their chief effect is simply to cause an evasion of the law and a violation of the oaths of various officers charged with the duty of enforcing the law.

Mr. Chairman, I desire to thank you and the committee for your considerate attention.

ARGUMENT OF ROBERT CRAIN, ESQ., OF BALTIMORE, MD.

Mr. CHAIRMAN AND GENTLEMEN: As general counsel for the United States Brewers' Association, I desire, with your permission, to present as briefly as possible some of the reasons why the so-called Hepburn bill should not become a law. In the short time at my disposal I can merely suggest some of them.

From an economic and temperance standpoint I think this bill is thoroughly vicious, but I desire more particularly to discuss it from a legal standpoint. Speaking as a lawyer, after careful study of the question, it is my opinion that the bill, if passed, will be held unconstitutional for a number of reasons.

This same bill in the last session of Congress was introduced, reported favorably, and passed the House before its opponents knew that such a bill was even pending. As soon as the bill was brought to their attention, a hearing was requested before the Senate Committee on Interstate Commerce, and after full argument that honorable committee rejected the measure, and it died.

Before this bill can become a law the commerce clause of the Constitution of the United States must be absolutely sacrificed and disregarded; the famous opinions of John Marshall in *Gibbons v. Ogden* and in *Brown v. Maryland* must be repudiated; the police powers of the several States must be given extraterritorial effect, and the regulation of commerce, which in the plainest Anglo-Saxon language was delegated by the Constitution to the Congress of the United States exclusively, must be transferred in this special instance to the several States.

I have not the time to go into this as thoroughly as I should like, but, briefly speaking, as you know, this bill is introduced to overcome the legal effects of a decision of the Supreme Court of the United States growing out of the so-called Wilson bill, passed August 8, 1900.

The Wilson bill was also passed at the request of the friends of prohibition, to overcome the legal effects of a decision of the Supreme Court. It is worth while to examine these decisions.

In *Leisy v. Hardin* (135 U. S., 100), "the original-package case," the Supreme Court held that no State had the power to control or prohibit

the sale of intoxicating liquors transported from one State into another, so long as it remained in original packages.

The language of Chief Justice Fuller in this case has an important bearing on the question of the constitutionality of this proposed bill. "The power vested in Congress," he says, "to regulate commerce with foreign nations and among the several states and with the Indian tribes, is the power to prescribe the rule by which that commerce is to be governed, and is a power complete in itself, acknowledging no limitations other than those prescribed in the Constitution. It is coextensive with the subject on which it acts, and can not be stopped at the external boundary of a State, but must enter its interior and must be capable of authorizing the disposition of those articles which it introduces, so that they may become mingled with the common mass of property within the territory entered."

Further on he says: "These decisions rest upon the undoubted right of the States of the Union to control their purely internal affairs, in doing which they exercise powers not surrendered to the National Government; but whenever the law of the State amounts essentially to a regulation of commerce with foreign nations or among the States, as it does when it inhibits, directly or indirectly, the receipt of an imported commodity, or its disposition before it has ceased to become an article of trade between one State and another, or another country and this, it comes in conflict with a power which in this particular has been exclusively vested in the General Government, and is therefore void." Immediately following this decision, in order to overcome its effects, the Wilson bill was introduced and became a law on August 8, 1890.

On May 25, 1891, the Supreme Court for the first time construed this Wilson bill in the case of *Wilkerson v. Rahrer* (140 U. S., 572) on the case as presented, that intoxicating liquors transported into the State of Kansas and there sold, after the passage of this act, were subject to the existing laws of that State as to the selling of such liquors.

After this came the case of *Scott v. Donald* (165 U. S., 58), decided January 18, 1897, which construed the South Carolina dispensary law of January 2, 1895, and held it to be unconstitutional and void as a hindrance to interstate commerce; and held, further, that the dispensary law was not within the scope and operation of the Wilson Act.

When this Wilson bill again came before the Supreme Court of the United States in the case of *Rhodes v. Iowa* (170 U. S., 415) the court rather dodged the question of its constitutionality, and, in an exhaustive opinion defining its scope and meaning, held that under its provisions liquors transported from one State to another remain under the protection of the interstate-commerce law until they are delivered to the consignee, and that the State law is inoperative to reach them until they are delivered by the common carrier to the person to whom they are consigned.

The present Hepburn bill is designed to overcome this just and equitable interpretation of the Supreme Court, by providing that State liquor laws shall become operative upon a shipment of liquor immediately upon its "arrival within the boundary of such State or Territory before and after delivery" the addition of the last four words being the only amendment of the existing law. In other words, the mere physical arrival of the liquor on the boundary of any State, even though it be intended for private use, shall make it subject to the operation of State laws, and shall enable any State to empower its

officials to confiscate it or destroy it or do as they please with it regardless of the purposes for which it is intended, or of the rights of any individual or of the consignor or consignee.

If the Wilson bill had contained the provision of the proposed Hepburn bill—that the police power of the States should attach to articles of commerce before delivery—the Supreme Court would of necessity, in the Rhodes case, have held the Wilson bill to be unconstitutional, for the plain reason that the whole theory of that decision rests upon the basic principles involved in the subject under discussion, and which we now say are settled law, to wit: That the power of Congress over interstate commerce is complete; that spirits and malt liquor are legitimate subjects of interstate commerce; that interstate commerce begins with the shipment and ends with the arrival of the article in the hands of the consignee, and until such arrival interstate commerce continues; and as long as interstate commerce continues, the police powers of the State can not attach, and such police power of the State can attach to interstate commerce shipments only when the shipment has reached the consignee.

When the shipment reaches the border line of the State, and is yet to be delivered, the goods are still in transitu, are subjects of interstate commerce, and under control of the interstate commerce clause of the Constitution. If the police power could seize or lay hands on such goods at the border line the police power would be given extraterritorial jurisdiction; would supersede interstate commerce in its control of the shipment, and would destroy the rights of the citizens of the several States to ship articles of commerce and have them delivered to the purchaser in another State.

Mr. PEARRE. Do you say that the Rhodes case so decides, or do you so contend?

Mr. CRAIN. I mean to say that the Rhodes case preserves the commerce clause of the Constitution inviolate, and that it either says or justifies the conclusions and principles of law I have just stated. You can't, under the law, touch an interstate shipment until it reaches the hands of the consignee.

Mr. PEARRE. You contend that Congress has not the power to remedy that?

Mr. CRAIN. I contend that Congress has not the power to change the constitutional law of the land. I contend that the Supreme Court held in the Rhodes case that "arrival" meant, not arrival in the State, as the Wilson act says, but delivery to consignee, because the court did not believe that Congress had the power to do what our prohibition friends want you to do, and what they thought they had done when they got you to pass the Wilson bill.

I may say that this measure in the last Congress, as well as in this, has had some support because its real character was not understood. You have heard a great deal from our very estimable prohibition friends about the abuses and evasions under the existing law, and like the advocates of the bill before the last House, they argue that this bill merely enables the State to suppress these abuses, and that it in no wise interferes with the right of any individual to import for his own use any liquor he desired. If this were so, the brewers of the United States would not oppose this bill, for they are not defending or asking protection for any such abuses or evasions; but unfortunately it is not so, as the prohibitionists who conceived and foster this bill well know.

It has had support because at first blush the bill looks, as its champion in the last Congress argued, like "a proposition simply to give to the States the right of local self-government; the right of a majority in any community to make their own laws and to enforce them." But it does very much more than this.

Its own chief advocate on the floor of the last House said, "this is a proposition to surrender back to the States certain control which was given by the Federal Constitution under the commerce clause to Congress." He certainly stated the fact, even if he did thereby admit the utter unconstitutionality of the act. But it is even much more than this. It does for a State by indirection what the State itself can not do.

The error of such contentions as to the power of Congress is clearly established by the decision of the Supreme Court in the Rhodes case and in the Vance *v.* Vandercook case, to which I shall refer presently, and by what is apparently undisputed law from an examination of the authorities.

Thus Justice White, in delivering the opinion in the Rhodes case, cites the following from the Bowman case (125 U. S., 465):

It might be very convenient and useful in the execution of the policy of prohibition within the State to extend the powers of the State beyond its territorial limits. But such extraterritorial powers can not be assumed upon such an implication. On the contrary, the nature of the case contradicts their existence. For if they belong to one State they belong to all, and can not be exercised severally and independently.

It is enough to say that the power to regulate or forbid the sale of a commodity, after it has been brought into the State, does not carry with it the right and power to prevent its introduction, by transportation, from another State.

The court further says:

It is not gainsaid that the effect of the act of Congress was to deprive the receiver of goods shipped from another State of all power to sell the same in the State of Iowa in violation of its laws, but while it is thus conceded that the act of Congress has allowed the Iowa law to attach to the property when brought into the State before sale, when it otherwise would not have done so until after sale; on the other hand, it is contended that the act of Congress in no way provides that the laws of Iowa should apply before the consummation by delivery of the interstate-commerce transaction.

To otherwise construe the act of Congress, it is claimed, would cause it to give to the statutes of Iowa extraterritorial operation, and would render the act of Congress repugnant to the Constitution of the United States. It has been settled that the effect of the act of Congress is to allow the statutes of the several States to operate upon packages of imported liquor before sale. (Re Rahrer, Wilkerson *v.* Rahrer, 140 U. S., 545 (35:572).)

The decision then goes on with great refinement of reasoning to analyze what the words "arrival in a State" mean, and goes on to show that if it meant at the State borders, it would nullify the whole act; but to uphold the meaning of the word "arrival," which is necessary to support the State law as construed below, forces the conclusion that the act of Congress in question authorized State laws to forbid the bringing into the State at all. This follows from the fact that if arrival means crossing the line, then the act of crossing into the State would be a violation of the State law, and hence necessarily the operation of the law is to forbid crossing the line and to compel remaining beyond the same. Thus, if the construction of the word "arrival" be that which is claimed for it, it must be held that the State statute attached and operated beyond the State line confessedly before the time when it was intended by the act of Congress it should take effect.

But the subtle signification of words and the niceties of verbal distinction furnish no safe guide for construing the act of Congress. On the contrary, it should be interpreted and enforced by the light of the fundamental rule of carrying out its purpose and object, of affording the remedy which it was intended to create, and of defeating the wrong which it was its purpose to frustrate.

Undoubtedly the purpose of the act was to enable the laws of the several States to control the character of merchandise therein enumerated at an earlier date than would have been otherwise the case, but it is equally unquestionable that the act of Congress manifests no purpose to confer upon the States the power to give their statutes an extraterritorial operation so as to subject persons and property beyond their borders to the restraints of their laws.

If the act of Congress be construed as reaching the contract for interstate shipment made in another State, the necessary effect must be to give to the laws of the several States extraterritorial operation, for, as held in the *Bowman* case, the inevitable consequence of allowing a State law to forbid interstate shipments of merchandise would be to destroy the right to contract beyond the limits of the State for such shipments. If the construction claimed be upheld, it would be in the power of each State to compel every interstate commerce train to stop before crossing its borders and discharge its freight, lest by crossing the line it might carry within the State merchandise of the character named covered by the inhibitions of a State statute.

The court further says:

Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter? In view of this necessary operation of the law of Iowa, if it be valid, the language of this court in the case of *Hall v. De Cuir*, 95 U. S., 485, 488 (24:547, 548), is exactly in point. It was there said: "But we think it may safely be said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress. The statute now under consideration, in our opinion, occupies that position."

Now, this Hepburn bill is introduced to get around this decision. I have cited this case very fully, because, unless the Supreme Court reverses itself or completely shuts its eyes to the real nature of this bill, and the inevitable practical result that it will interfere with interstate commerce, it can not possibly hold it to be constitutional. To do so—

Mr. THOMAS. Before you leave that point that you were on, I would like to ask you a question if it does not interrupt you.

Mr. CRAIN. With a great deal of pleasure.

Mr. THOMAS. Is it your contention that Congress has no constitutional power to prohibit the transportation of intoxicating liquors from one State into another?

Mr. CRAIN. I have not said so, because that question is not germane to the issue. The Supreme Court—

Mr. THOMAS. I ask whether that is your contention?

Mr. CRAIN. No; I am not making that contention now. But I am contending that even if Congress can interfere with interstate commerce in liquor (which I by no means admit), it can not, as this bill does, delegate to the States the power to do so. I say that the Supreme Court said, in the case of *Rhodes v. Iowa* and in *Vance v. Vandercook*, that the interstate commerce never ceased until the arrival of the goods, i. e., until they reached the hands of the consignee.

This bill proposes to allow the State to seize them before and after delivery. It proposes to stop commerce by preventing delivery. It proposes to enable any State to make prohibition effective by shutting off interstate commerce in liquor. For if the thirsty beer drinker can't get his glass of beer at home and can't import it, he is pretty effectually prohibited.

Mr. PEARRE. May I ask you a question?

Mr. CRAIN. Certainly.

Mr. PEARRE. I do not understand that this is a question of prohibition or antiprohibition.

Mr. CRAIN. In reality it is, but I am not now discussing it from such a standpoint.

Mr. PEARRE. I am especially interested in the legal features.

Mr. CRAIN. I am trying to give them to you.

Mr. PEARRE. Do I understand you to quote any decision of the Supreme Court of the United States to the effect that the pending bill is unconstitutional?

Mr. CRAIN. I say that if you read the case of *Rhodes v. Iowa*, (170 U. S.)—my time is getting very limited, but if I had the time to read the whole case to you I would like to do so—that if you read that you will see that the one thought in the mind of Justice White, who wrote the opinion, was that the interstate commerce continued until the goods reached the hands of the consumer.

Mr. PEARRE. I understand that.

Mr. CRAIN. And he also said in that case in exact words that the shipment was interstate commerce until it reached the hands of the consignee. Now, if that is the case, and this bill says you can get hold of the goods before they reach the hands of the consignee, is the conclusion not inevitable that the act is unconstitutional?

Mr. PEARRE. Just there, did not the court say that the protection of the interstate-commerce clause of the Constitution continued until the article came into the hands of the consignee—I understand that—but did not the court say that that was so under existing circumstances because Congress had not acted, did it deny the power of Congress to thus affect interstate commerce in liquor?

Mr. CRAIN. The Supreme Court, Mr. Pearre, did not decide in reference to this bill because this bill had not been introduced, but I say that the Supreme Court said that commerce continued until it got into the hands of the consignee, and you could not touch it.

Mr. PEARRE. Has not the court always indicated in its opinions that Congress had the power to go to the fullest extent that it will undertake to act in this bill if this committee reports it?

Mr. CRAIN. Absolutely not. The Supreme Court has gone the limit very often, but I believe they would stop at this bill. Let me show you why by calling your attention to the latest decision by the Supreme Court, in which the question under discussion was passed upon, which is the case of *Vance v. Vandercook Company*, decided May 9, 1898 (170 U. S., 438), at the same time the Rhodes case was decided. This case establishes the following points:

First. That “the respective States have plenary power to regulate the sale of intoxicating liquors within their borders, and the scope and extent of such regulations depend solely on the judgment of the law-making power of the States, provided always, they do not transcend the limits of State authority by invading rights which are secured by the Constitution of the United States, and provided further, that the regulations as adopted do not operate a discrimination against the rights of residents or citizens of other States of the Union.”

Second. That “equally well established is the proposition that the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been

committed by the Constitution of the United States to Congress, and hence that a State law which denies such a right, or substantially interferes or hampers the same, is in conflict with the Constitution of the United States."

Third. "That the interstate commerce clause of the Constitution guarantees the right to ship merchandise from one State into another, and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which allows State authority to attach to the original package before sale but only after delivery."

Fourth. That "the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine their contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject."

Fifth. That "the right of the citizen of another State to avail himself of interstate commerce can not be held to be subject to the issuing of a certificate by an officer of the State of South Carolina, without admitting the power of that officer to control the exercise of the right. But the right arises from the Constitution of the United States; it exists wholly independent of the will of either the lawmaking or the executive power of the State; it takes its origin outside of the State of South Carolina and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment, and can not be in advance controlled or limited by the action of the State in any department of its government."

Now, gentlemen, that is the law. And until the Supreme Court reverses itself this bill can not be constitutional, unless it be true as claimed (1) that it does not in the least interfere with shipments from another State; or (2) that it does not empower any State to interfere with the right of any one to import liquor for his own use. It assuredly does both these things.

If this act becomes a valid law, there can be absolutely no question that if a citizen of the State of Iowa orders a case of beer from the State of New York, the seller in New York could not ship that case of beer to the citizen of Iowa for the simple reason that immediately upon its arrival within the boundaries of the State of Iowa "before and after delivery" the police power of Iowa attaches, and the temperance inquisitors of that State can seize the package, and if the State law permits it, they can destroy it; or sit in judgment on it as to whether it shall go to the consignee, or whether it is good for his health, his morals, or his hereafter.

So that, although no State can "forbid shipment to an individual resident for his own use," and although Congress itself also can not do this, yet by this specious legislation it accomplishes indirectly what it can not do directly. I do not believe the courts would uphold this. Congress can not delegate to any State the power not only to regulate commerce and to destroy it, but also to regulate individual liberty and to destroy it.

Mr. HENRY. Why is this any more a delegation of power than the Wilson Act of 1890 was?

Mr. CRAIN. For the simple reason that the Wilson Act did not say that commerce had to be stopped. It said that commerce could continue, and commerce did continue until the goods got into the hands of the consignee.

Mr. HENRY. But the act did not say that, did it?

Mr. CRAIN. The Prohibitionists who had it passed did not think it said that, but the Supreme Court said that is what "arrival" meant.

Mr. HENRY. The act said that commerce could continue until the goods got into the hands of the consignee.

Mr. CRAIN. The act said—

Mr. HENRY. Did it not propose simply to give the States absolute freedom in dealing with interstate commerce?

Mr. CRAIN. That was the idea. The Wilson bill said that after the goods reached the State, arrived in the State, that the power of the State should attach.

The Supreme Court said "arrival in any State" meant arrival in the hands of the consignee, and that arrival in the hands of the consignee meant the continuation of the commerce from the time of the purchase and the shipment down to the time of the delivery.

Mr. HENRY. I do not want to interrupt you, but did they not say, in debate, that "arrival in the State" meant arrival in the boundaries of the State and not in the hands of the consignee?

Mr. CRAIN. In debate, very likely; I think so.

Mr. HENRY. Was not that the intention of the act?

Mr. CRAIN. Of the framers of the act, no doubt. If that was the intention I wish they had clearly expressed it, for then there would never have been any Wilson Bill. The Supreme Court would have knocked it into a cocked hat.

Marshall's opinion in *Gibbons v. Ogden*, that "commerce among States" means into and not merely to the boundary of States is still law in this country, I am glad to say. It was precisely because the court held "arrival" to mean delivery that the act was held constitutional; had they held it to mean what, as you rightly say, it was intended to mean, they would have held it to be unconstitutional. The court says so in so many words. Read those decisions and you will find out that from the beginning to the end the courts are not willing, are entirely unwilling, that Congress should give up its control over interstate commerce and delegate it to the States.

Mr. GILLETT, of California. May I ask you a question?

Mr. CRAIN. With pleasure.

Mr. GILLETT, of California. The Constitution says that Congress has the power to regulate commerce?

Mr. CRAIN. Yes.

Mr. GILLETT. Do you believe that Congress has the power to pass an act prohibiting interstate commerce on matters that are treated as subjects of legitimate commerce?

Mr. CRAIN. Not at all; and I am glad you ask that, for I want to refer to the recent opinion of Justice Harlan in the so-called Lottery case. (*Champion v. Ames*, 188 U. S., 321.)

At the last hearing before this committee counsel for the temperance people, with much bravado, proclaimed that since the Lottery case decision there could be no doubt of the constitutionality of a bill in Congress prohibiting any commerce in liquors. There is nothing in the opinion of the court warranting any such statement.

The whole intent of the act upheld by this opinion was the suppression of a nuisance and a fraud in interstate commerce traffic, which was being carried on through the transportation of lottery tickets through the means of interstate commerce. The opinion at page 501 cites the case of *Phalen v. Virginia* (8 How., 163), which held "that the suppression of nuisances injurious to the public health or morality is among the most important duties of government, and experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few persons and places, but the latter infests the whole community;" the justice further says that "in other cases we have adjudged that authority given by legislative enactment to carry on a lottery, although based upon a consideration in money, was not protected by the contract clause of the Constitution; this, for the reason that no State may bargain away its power to protect the public morals, nor excuse its failure to perform a public duty by saying that it had agreed, by legislative enactment, not to do so."

The court further says, at page 501:

As a State may, for the purpose of guarding the morals of its own people, forbid all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the "widespread pestilence of lotteries" and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another. In legislating upon the subject of the traffic in lottery tickets, as carried on through interstate commerce, Congress only supplemented the action of those States—perhaps all of them—which, for the protection of the public morals, prohibit the drawing of lotteries, as well as the sale or circulation of lottery tickets, within their respective limits. It said, in effect, that it would not permit the declared policy of the States, which sought to protect their people against the mischiefs of the lottery business, to be overthrown or disregarded by the agency of interstate commerce. We would hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce, can not be met and crushed by the only power competent to that end.

In concluding his opinion the justice said (p. 504):

The whole subject is too important, and the questions suggested by its consideration are too difficult of solution to justify any attempt to lay down a rule for determining in advance the validity of every statute that may be enacted under the commerce clause. We decide nothing more in the present case than that lottery tickets are subjects of traffic among those who choose to sell or buy them; that the carriage of such tickets by independent carriers from one State to another is therefore interstate commerce; that under its power to regulate commerce among the several States Congress—subject to the limitations imposed by the Constitution upon the exercise of the powers granted—has plenary authority over such commerce, and may prohibit the carriage of such tickets from State to State; and that legislation to that end and of that character is not inconsistent with any limitation or restriction imposed upon the exercise of the powers granted to Congress.

No sane and decent person will suggest that it is necessary to stop the transportation of beer in order to "guard the morals of the people" or "to prevent widespread pestilence in lotteries," yet these were the causes which induced the Supreme Court to render its decision in the lottery cases, and to say that under the power of Congress to regulate it had the right to stop the transportation of lottery tickets for the public good.

Before Congress can prohibit, directly or indirectly, the interstate traffic in beer, it must first be established that beer is not a legitimate article of commerce; and if I had the time I should like to quote you some of the adjudications on this point. Even the Supreme Court will not forget that the brewing industry is not on a par with traffic in

lottery tickets; that it has been encouraged and fostered by colonial and Congressional legislation since the beginning of the country; that it has had the special commendation of the most eminent statesmen from Alexander Hamilton on down as a legitimate source of official revenue, and that it has contributed as much to the prosperity of the country and to the income of the nation as any other industry.

Mr. POWERS. You have referred to the case of Gibbons. Did not Marshall hold in that case that the right to regulate an article of interstate commerce carried with it the right to prohibit an article of interstate commerce?

Mr. CRAIN. No, sir; he did not go that far. Gibbons and Ogden, and Brown and Maryland, to the great credit of John Marshall, did not go that far, and, if he needed any monument, they would be a monument to his ability.

Mr. POWERS. Do you not find that he made this statement: That the prohibition of a single article of interstate commerce amounted to a regulation of interstate commerce as a whole?

Mr. CRAIN. I did not catch that.

Mr. POWERS. Do you not find that Marshall said in the Ogden case that the prohibition of a single article of commerce might amount to a regulation of interstate commerce?

Mr. CRAIN. That is undoubtedly so.

Mr. POWERS. Under that, may not interstate commerce be regulated by Congress by the prohibition of some one article?

Mr. CRAIN. Certainly not in the sense contended for by the prohibitionists. It might, to this length. If they said that this article that they were going to regulate was a fraud or a menace to public health or morals. I suppose Congress could say you could not carry smallpox patients from one State to another, or yellow-fever patients, or those kind of things.

Mr. POWERS. Have you ever seen the various bills introduced in the last five or six years providing for the prohibition of interstate commerce in trust-made goods?

Mr. CRAIN. Yes.

Mr. POWERS. What do you think of those bills?

Mr. CRAIN. That is a large question. There is a difference between a regulation of the commerce and a prohibition of commerce. That is the whole point. Just think of the shrewdness of our prohibition friends. Congress is asked to do something. Not to prohibit; oh, no; merely to regulate—to help the States regulate. That looks innocent enough. Pass the law—

Mr. POWERS. I want your views. I am not expressing my opinion. But would you say a bill, passed by Congress which prohibits interstate commerce in sending goods manufactured by certain corporations, known as the trusts, would be unconstitutional?

Mr. CRAIN. As the laws stand to-day, I would say yes. I would certainly say that Congress can not delegate to any State the power to say that such goods can not cross the State border, which is the case here. Even in the lottery cases the court had to have it argued twice, and then they were a divided court, and were months and months before they could get together on any kind of an opinion at all.

Mr. HENRY. One more question, if you please, although I do not want to interrupt you. I want to get the legal effect of this act. Suppose the act is passed?

Mr. CRAIN. The mere passage of this bill, of course, will not itself affect commerce, except in prohibition or local-option States, or in States having appropriate laws to take advantage of it, and the minute any State passes the necessary law, if it does not already have it, that minute the control of interstate traffic in liquor so far as that State is concerned passes to such State; and as different States will have different laws, one legal effect will be that chaos and inequality must prevail.

The control of interstate commerce was placed in Congress to prevent conflict and effect equality and uniformity. This bill at once destroys this. Rights guaranteed to a citizen of the United States and recognized by one State are denied by another. Interstate commerce in liquor will be lawful under certain restrictions or to a certain extent in one State and under different restrictions and to a different extent in another State. That uniformity and equality which the law of the land guarantees will be destroyed, and those rights, privileges, and immunities as to personal liberty and property guaranteed to the citizens of the United States by the Constitution will be at the mercy of the States.

If Congress can delegate to a State this power to regulate commerce by prohibiting it, of what use is the provision of the Federal Constitution as to interstate commerce? Does not Congress override the Constitution? Does not such action amount to a practical nullification of this provision of the Constitution, or at least an abdication of power under it?

Mr. HENRY. What effect would it have upon the importation of beer into local-option precincts in States where they have not State prohibitory laws?

Mr. CRAIN. If this bill were passed?

Mr. HENRY. Yes.

Mr. CRAIN. It would depend on the State laws, but it is not probable that you could get any beer in there unless our prohibition friends went to sleep or lost their muskets.

Mr. HENRY. I wanted to see how far-reaching it is.

Mr. CRAIN. That is it until you study it you do not grasp how tremendously far-reaching—

Mr. BRANTLEY. Let me ask you a legal question. Suppose this bill becomes a law; suppose it should be declared constitutional; what becomes of this interstate power over the commerce of liquor in those States that do not see proper to enact any legislation to carry out the provisions of this law; does not Congress abdicate its power completely by this bill?

Mr. CRAIN. It surrenders all the power that Congress has in reference to this and it gives to the State the right to act. Of course, if a State does not act—if there is no prohibition or special legislation in the State—then the act has no effect.

Mr. BRANTLEY. Then what becomes of the power; has not Congress parted with it?

Mr. CRAIN. It has parted with it and given it up, and that is what we say they can not do, and I challenge any lawyer in this country to read every decision from Gibbons and Ogden down to this case (188 U. S.—the Lottery case, the Ames case), and you will not find one single expression from all of the judges that have expressed opinions on this question showing that they even dreamed that Congress had a

right to give up their power over interstate commerce and to delegate it to the several States.

Chief Justice Marshall, in *Gibbons v. Ogden*, said that "when a State proceeds to regulate commerce with foreign nations or among the several States it is exercising the very power that is granted to Congress, and is doing the very thing which Congress is authorized to do." (Judson on *Taxation*, p. 103.)

Is not a sacred duty imposed upon Congress, in its control over interstate commerce, to safeguard the rights of the citizens of the several States in relation to interstate commerce, and not to be a party to any law scheme which seeks to destroy the individual right of any citizen of any State of the Union?

Mr. BRANTLEY. One more question. Suppose this bill passes and it is upheld as a constitutional law, would Congress then have left the power, if it ever had it, to pass a law prohibiting interstate commerce in liquor?

Mr. CRAIN. Congress might repeal the act.

Mr. BRANTLEY. I mean without repealing this act.

Mr. CRAIN. I doubt it.

Just a word more in regard to the insidious simplicity of this bill. As I said a moment ago, its chief fallacy is that it pretends one thing and does another. The measure, in the last Congress as well as in this, has had some support, because its real character was not understood. At first blush it looks, as its champion in the last Congress argued, like "a proposition simply to give to the States the right of local self-government, the right of a majority in any community to make their own laws and to enforce them." But this Hepburn bill does very much more than this. It delegates to the States a power denied them by the Constitution. It enables them to override those sacred rights and privileges guaranteed each citizen by the Constitution and the unwritten law of the land.

The laws of Iowa, let us say, make it unlawful to manufacture or sell beer. This law can not be enforced, say the advocates of this bill, because, forsooth, thirsty individuals import their beer from other States. Now, no State has yet had the temerity to violate the most fundamental principles of free government by making it a crime to take a drink in the privacy of a man's own home, for "they shall sit every man under his vine and under his fig tree and none shall make them afraid, for the mouth of the Lord of Hosts hath spoken it." In other words, the wary Prohibitionist of Iowa or Kansas says: I have prohibited the manufacturing of beer; I can't prohibit anyone from drinking it, for that would be a violation of a right for which men have battled from the days of Runnymede to Spions Kop.

I can't prevent him from getting it as long as the Congress of the United States controls interstate commerce and permits him to import it consigned to himself, but if I can get the Hepburn bill passed I can seize the goods "before and after delivery," and then, inasmuch as he can't import it, and can't get it in his own State, there will be nothing left for him to do but quit drinking; and presto! Prohibition will prohibit. Surely, the mere statement of this proposition is its sufficient answer.

The very simplicity of the bill conceals its truly extraordinary and far-reaching character. Its passage would be the greatest invasion of

the rights of the individual ever perpetrated by any American Congress; it would bring more discord and strife into the peace and harmony of the States, and stir up more bitterness and feeling among the people than any legislation since the fugitive-slave law; it would mean a loss of many millions to the brewing interests of the country; it would line the boundary of every temperance State with sneaks and smugglers; and, inasmuch as whisky can be more easily smuggled than beer, it would do the cause of temperance far more harm than good.

The beer drinkers and the enormous brewing industry of the United States do not believe that Congress is ready to pass any bill which either in purport or effect is a prohibition measure. While the temperance sentiment in this country may in recent years have increased, there can be no question that the prohibition sentiment has decreased. As a political issue prohibition is dead, and as a moral issue it has been abandoned even in the house of its friends. And this fact ought to be a source of much hope to the true lovers of temperance, for it means that if this great drink question is treated with fairness and intelligence instead of with bitterness and bigotry great good can be wrought. The beer industry is here to supply a human want, and it is here to stay. Its friends outnumber its enemies ten to one, and it is entitled to intelligent consideration and to a protection from a mistaken or fanatical minority.

Prohibition has failed because it is foreign to the genius of our free institutions and because it has lacked a sufficiently strong ethical basis to insure the necessary public approval and support. Prohibition does not prohibit; it demoralizes. And I say that in its legal and practical consequences this bill means prohibition by act of Congress wherever and whenever any State desires it. In his recent work on constitutional law, Professor Tiedeman devotes a chapter to the constitutionality of prohibition laws, and says that in his opinion as a jurist the courts have not followed the law in upholding the various prohibition laws. I mention this merely to show that even in the courts the cause of prohibition is losing caste, just as it is with the public and even with the reformers.

As you know, the most complete and definitive study of the liquor problem ever made is that now being made by the so-called "Committee of Fifty," composed of men like President Elliott, Seth Low, Doctor Peabody, Carroll Wright, and others, and their various reports are an unanswerable indictment not only of prohibition, but of modern temperance methods. The best temperance thought of the day has abandoned prohibition as a way out of Egypt. Men like Bishop Potter, Bishop Magee, Bishop Hall, Doctor Rainsford, Lyman Abbott, and a host of other temperance reformers are outspoken enemies of the prohibition propaganda. Temperance is not an emotional, nor even a merely moral question. It is an economic problem calling for calm and intelligent study with some regard for the facts. The truth, as Professor Atwater puts it, is that "temperance reform has been supported by false arguments until its adherents feel that those arguments are almost inseparable from the cause itself. If the strongest weapon against a doctrine is the truth, it is time we revise the doctrine." Perhaps the best expression of the highest modern thought on the subject I can cite is that of Lyman Abbott, as set forth in a recent sermon; and I surely could not phrase a better argument against this bill.

"My objection," he says, "to prohibitory laws is not that they can not be enforced, but that they ought not to be enforced. * * * Not even the local community has a right to determine that men shall not drink alcohol. * * * Has a rural community in Maine, which thinks the saloon is an injury, a right to prohibit the saloon to the people of Bangor or Portland, who entertain a different opinion? If so, on what is that right based? * * * It must be based on the supposed right of the majority to impose their conscience on the minority, to determine for them what is safe and right, to act toward them *in loco parentis*; and this right of the majority to act *in loco parentis* toward the minority is fundamentally antagonistic to the essential principle of a democracy."

Aside from all legal objections, this committee will consider well the social and economic viciousness of such a law. There is no demand for such legislation and no real sentiment to sustain it. This kind of interference with individual liberty is foreign to the spirit of our laws and the genius of our civilization.

And this surely is true. The history of civilization, as I read it, sums itself up in the constant struggle of the individual toward greater personal freedom. Liberty has not merely been a shibboleth; it has, consciously or unconsciously, been the very life of the races in their onward struggle. "To pursue one's own good in one's own way," to quote Mr. Mill's famous phrase, means individual liberty; to permit a numerical majority or minority to define the "way" or determine the "good" is tyranny. Perhaps it is a trifle farfetched, but I can not help noting that the ideal of individual freedom has been strongest among the drinking races, and that humanity owes its best heritages to them—the Greek gave us literature and art; the Roman, law; and the hardest drinker of them all, the Teuton, gave us that passion for freedom which has made the Saxon the conqueror of the world. What have the three great races which rejected alcohol—the Arab and the Hindu and the Mongolian—done to equal the work of their drinking rivals?

No law could possibly be more fundamental or far-reaching or more antagonistic to the American ideal of individual rights than is this bill. The doctrine of the police power has, it is true, been carried very far by judicial interpretation in this country; "but broad and comprehensive as is this power, it certainly can not extend to the individual tastes and habits of the citizen, which are confined entirely to himself." (License case, 5 How., 583.)

In former times sumptuary laws were sometimes passed * * * but the ideas which suggested such laws are now exploded utterly, and no one would seriously attempt to justify them in the present age. The right of every man to do what he will with his own, not interfering with the reciprocal rights of others, is accepted among the fundamentals of our law. (Cooley's *Constitutional Limitations*, 385.)

Finally, I wish to reiterate that in considering legislation of this character this committee should be guided by the truth, and not by the sentimental hopes or the bitter fanaticism of those who abhor drink as they abhor the devil; or, to summarize the whole question in the words of the greatest living authority on the drink question, Mr. Gallus Thomann:

Lawmakers should bear in mind that the use of intoxicants is not a vice, but a perfectly proper enjoyment of great physical, intellectual, and moral benefit to the individual, and of inestimable ethical and material advantage to society; that the

abuse of inebriating liquors is a vice, and that, while society is warranted in protecting itself against the effects of this abuse, the method of such protection should not in the least affect the liberty of action of the drinker, but should hold the drunkard responsible. * * * A very small minority drink excessively, and these, as a rule, are the least useful members of the community.

The effect of State interference like this is to deprive millions and tens of millions of useful men of their personal liberties and of that which enhances their well-being, and consequently the well-being of the community, in order to rescue from the throes of vice a small minority of weaklings, who, in the absence of drink, would as naturally succumb to any other one of the many vices and passions against which society finds ample protection in its penal laws. Such laws sacrifice the rights and well-being of the vast majority of moderate drinkers for an infinitesimally small minority of drunkards. * * *

I have no comment to make on many of the statements and representations that have been made during this hearing, but I can not refrain from referring you to high ecclesiastical opinion as to its general value, and I close by reading to you Bishop Potter's opinion of prohibitionists, published in the *Outlook*, March 11, 1899, as set forth in a letter to Lyman Abbott:

* * * It is the old situation—as old as the religion of Jesus Christ—with the Scribes and Pharisees on the one hand, the Sadducees on the other, and over and against them the Truth.

No more perfect reproduction of the first named has appeared in our day than the Prohibitionists; et id omne genus—arrogant, denunciatory, ignorant, unscrupulous, and untruthful; holding one meager fragment of truth to their eyes, and denying great and fundamental facts in human nature, in their futile and foolish endeavor to remedy the perversion of human instincts by extirpating them. The grotesque hypocrisy of the prohibition system, from Maine to Kansas, is a sufficient commentary upon their theories. Meantime, the endeavors of wiser men and women to better the condition—the homes, the domestic life, the recreations—of their less-favored brethren go untouched by these, fit successors of those to whom Jesus said: “Woe unto you, Scribes and Pharisees, hypocrites, for ye bind heavy burdens upon men's shoulders, and grievous to be borne and ye yourselves will not touch them with the tips of your fingers.”

I thank the committee for their attention.

STATEMENT OF MR. WARWICK M. HOUGH, OF ST. LOUIS, MO.

General counsel for the National Wholesale Liquor Dealers' Association of America, an organization which comprises the leading distillers and wholesale dealers of the United States.

Mr. Chairman and gentlemen of the committee, in endeavoring to accommodate everybody else who came to this hearing I deprived myself of a part of the time I expected to occupy and, as a result, in order to come within the limits of the time allowed, and at the same time to cover the entire ground in at least a statement of the proposition which I wish this committee to consider, it will be necessary for me to adhere very closely to the notes which I have prepared.

Laws which are enacted under our form of Government are supposed to reflect the sentiment and opinions of the majority represented by the law-enacting body whether the law-enacting body is a municipal assembly, a State legislature, or the National Congress, but no law is any stronger than the sentiment of the people of the place or locality to which it applies or where it is to be enforced. Where the prohibitory laws of a State or the police regulations of a State in respect to the manufacture and sale of intoxicating liquors truthfully reflect the sentiment of the people where such laws or regulations are

to be enforced, there is never any difficulty in enforcing them; but where such laws and regulations do not truthfully reflect the sentiment and opinions of the people amongst whom they are to be enforced they are seldom enforced, and in consequence fall into the inocuous desuetude and disrepute.

The crusade against the manufacture and sale of intoxicating liquors is the outgrowth of National and State organizations which reflect the sentiment of less than 20 per cent of the people and the voters of the whole United States, though the percentage in particular localities is of course very much greater.

All people believe in temperance—temperance in eating as well as in drinking, and the comparatively insignificant number in the United States who erroneously believe that temperance in drinking can be advanced by prohibitory measures frequently secure the assistance, in the passage of most drastic laws, of many strong advocates of temperance who do not at heart believe in the principle of prohibition. The results indicate, however, that prohibition has been a pronounced failure everywhere it has been attempted, and the strong temperance allies have from time to time abandoned the ultra prohibitionists to work out more satisfactory results through high license and strict regulations.

This bill is an insidious move on the part of these ultra prohibitionists to bring to their aid the strong arm of the Federal Government to accomplish that about the accomplishment of which the moral sentiment, in localities where such prohibitory measures now apply, is either indifferent or not sufficiently strong to compel an enforcement of such laws. That this is true is apparent not only from our knowledge of the conditions as they exist in such localities, but from the report which was made with this bill when it was reported at the last Congress and the debate which occurred on the floor of the House when it came up for passage.

The bill appears to have been reported at that time unanimously, and while I had at the first session of that Congress requested an opportunity of being heard, if the author of the bill intended to push it, I am informed that it was reported without a hearing, and therefore practically without such a discussion as to its merits as would have disclosed both its real purpose and effect and its viciousness.

While I am prepared to argue at the proper time and place that prohibition without qualification and without limitation is not only unconstitutional, but absolutely antagonistic to every principal upon which our Government was founded and utterly destructive of the natural and inherent rights of man, it is only necessary in connection with this discussion to say that this bill goes further than any prohibitionist has ever attempted to go before, individually or collectively, in enforcing his views upon temperance upon his fellow men, and, indeed, this view of the law was disclosed on the discussion of this measure on the floor of the House, wherein it was stated that the sole purpose of the bill was to enable the States to prohibit the carrying on of the business of selling.

The report which was made with the bill in the last Congress states in substance that the effect of the decision of the Supreme Court in the case of *Leisy v. Hardin* (135 U. S., 100) was to deny to the States the right to regulate or prohibit within such States the sale of intoxicating liquors while they remain in the original packages; that to

remove the effect of that decision the act of August 8, 1890, was passed, the constitutionality of which was upheld in the case of *In re Rahrer* (140 U. S., 545), but that the purpose of the law was practically destroyed by the decision of the Supreme Court in the case of *Rhodes v. Iowa* (170 U. S., 415), under which decision the States were practically "powerless either to prohibit such sales or to exercise any control or regulation over them," and that it was the purpose of the bill then reported to give the States the right to prohibit such sales in such States, and thus accomplish what was the original purpose of the act of August 8, 1890.

In the debate on the floor of the House Mr. Clayton stated as follows:

In other words, this is simply a proposition to restore to the States in this matter full and ample power to enforce their police regulations against the sale of intoxicating liquors; that is the whole question. (Congressional Record, January 27, 1903, p. 1390.)

In answer to a question from Mr. Bartholdt, as to whether the bill did not go further than that and as to whether it would not prevent the private citizen not engaged in selling from securing for his own table what he might see fit to drink, Mr. Clayton replied:

No, I do not think it goes to that extent; on the contrary, I am sure it does not go to that extent.

In reply to a question from Mr. Kleberg as to whether the bill would not prevent the introduction of liquor into the State by a private individual, Mr. Hepburn stated:

I think not, unless it is brought there for some illegal purpose. It is not illegal for the gentleman to carry liquors into the State of Iowa for his own consumption.

And again,

It is the illegal sale of liquor that our statute has been enacted to prohibit.

In reply to a similar question from Mr. Bartholdt, Mr. Hepburn replied:

There is certainly no provision that he may not do that, and no law of the State of Iowa that would prohibit him from doing that.

Other advocates of the bill on the floor of the House spoke to the same purpose, from which it is clear that the view of this committee in reporting that bill was that the bill was designed solely to prohibit, or to enable the States to prohibit, the carrying on of the business of selling intoxicating liquors within their domain, even though they may remain in the original packages.

That this was also the view of the various temperance societies advocating the passage of this bill is apparent from a reference to Senate Document No. 150, of the present session of Congress, which was printed February 8, 1904, wherein, on page 9, it says that the bill will—

not prevent anyone from buying liquors wherever they are legally sold in his State or out of it, but only prevents liquor dealers outside of a State from invading it to sell "original packages" of liquors to "speak easies" by the aid of the interstate-commerce powers of Congress. By comparing this law with a sample of State laws following, it will be seen that the Hepburn bill does not prevent buying liquors for private use.

And statements to similar effect were made by every speaker, as I recall it, since I have been in this room, except by Mrs. Foster, who frankly admitted that her purpose was to wipe out the manufacture

and sale of intoxicating liquors entirely. Either she understands the purpose of the bill better or she is a little more honest in admitting its purpose.

If we can show, therefore, that this right and this power to prohibit the carrying on the business of selling within the State already exist under the laws, and are sufficiently safe-guarded and protected, then we must conclude that our temperance and prohibition friends have been unnecessarily stampeded by the decision of the Supreme Court in the case of *Rhodes v. Iowa*, and that there is no necessity for this legislation at all, if it goes no further than its advocates claim. But if we can show, in addition, that the effect of this bill, if enacted into a law, would be to accomplish the very thing declared by all its advocates not to be the purpose of the bill, then surely this committee will not only feel themselves untrammelled by the action taken by this committee in the last Congress, but, in view of the variance between the avowed purposes intended to be accomplished and the effect of this bill, will not hesitate to reject it; and such action may all the more readily be taken in view of the further fact that even if the effect of the bill, as thus disclosed, was the hidden purpose of its promotors, such purpose and effect have been declared by the Supreme Court to be violative of the Constitution of the United States.

Mr. POWERS. Right there, Judge Hough, I would like to ask you a question.

Mr. HOUGH. Certainly.

Mr. POWERS. There is one question in my mind that seems to me to be the entire pith of the question of the constitutionality of the bill, and this is the question I would like to hear you upon. I suppose it will be conceded that the several States surrendered to the National Government the exclusive control over interstate commerce between the several States and Territories, and it is probably conceded that the National Government may not surrender its exclusive control over interstate commerce except by an amendment to the Constitution. Nobody has said that it is the intention to surrender to the States by an act of Congress exclusive control over an article of commerce, the control over which is vested in the National Government.

Mr. HOUGH. It is an attempt to delegate a part of the power it possesses under that clause of the Constitution to the extent that it will give the States the right to regular shipments without necessarily involving the right to sell, and I cover that when I come to it in this argument, and I will be very glad to answer any further questions on that line when I get through. But I have prepared this with reference to presenting this one point, and I would like to keep this idea in mind which I have started in upon, and would like to keep it continuously in the minds of the members.

Mr. POWERS. Very well.

Mr. HOUGH. Now, on the first point, as to the necessity, since the only difference in the prohibition situation occasioned by the decision of the Supreme Court in the case of *Leisy v. Hardin* was with reference to the sale of intoxicating liquors in such prohibition districts in the original packages, it is to be assumed that such prohibition laws were being, prior to such decision, satisfactorily and adequately enforced in prohibition districts where the popular sentiment really favored such legislation; and it must be conceded that the effect of the decision in the case of *Leisy v. Hardin* was to give the importer of intoxicating

liquors the right to sell in such prohibition districts in contravention of the local laws as long as the liquor remained in the original packages.

The Supreme Court of the United States in the cases of *Rhodes v. Iowa* (170 U. S., 412) and *Vance v. Vandercook* (170 U. S., 438) has emphatically declared that the effect of the act of August 8, 1890, known as the Wilson Act, was to remove the protection which the interstate-commerce clause of the Federal Constitution and the failure of Congress to legislate thereon had thrown around original packages, in so far as the right to sell or carry on the business of selling in the prohibition districts was concerned.

In the latter case the court says (p. 445):

It is also certain that the settled doctrine is that the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any State regulation to the contrary notwithstanding; that is to say, that the goods received by interstate commerce remain under the shelter of the interstate-commerce clause of the Constitution until by a sale in the original package they have been mingled with the general mass of property in the State. This last proposition, however, whilst generically treated, is no longer applicable to intoxicating liquors, since Congress in the exercise of its lawful authority has recognized the power of the several States to control the incidental right of sale in the original packages of intoxicating liquors shipped into one State from another, so as to enable the States to prevent the exercise by the receiver of the accessory right of selling intoxicating liquors in original packages, except in conformity to lawful State regulations.

In other words, by virtue of the act of Congress, the receiver of intoxicating liquors in one State sent from another can no longer assert a right to sell in defiance of the State law in the original packages, because Congress has recognized to the contrary. The act of Congress referred to, chapter 728, was approved August 8, 1890, and is entitled "An act to limit the effect of the regulations of commerce between the several States and with foreign countries in certain cases." It reads as follows: (Here follows the act.) The scope and effect of this act of Congress have been settled in *In re Rahrer* (140 U. S., 545), and *Rhodes v. Iowa* ante (412). In the first of these cases the constitutional power of Congress to pass the enactment in question was upheld, and the purpose of Congress in adopting it was declared to have been to allow State laws to operate on liquor shipments into one State from another, so as to prevent the sale in the original package in violation of State laws.

In the second case the same view was taken of the statute, and although it was decided that the power of the State did not attach to the intoxicating liquors when in course of transit and until receipt and delivery, it was yet reiterated that the obvious and plain meaning of the act of Congress was to allow the State laws to attach to intoxicating liquors received by interstate commerce shipments before sale in the original package, and therefore at such a time as to prevent such sale if made unlawful by the State law.

This citation and the decision in the case of *Rhodes v. Iowa* ought to clearly settle my first proposition.

They at least clearly demonstrate that the effect of the Wilson Act was to restore the situation or the condition of things as they existed prior to the decision in the case *Leisy v. Hardin*, in so far as the right of a State was concerned to prohibit the sale of intoxicating liquors at any place within the State. This being so, it is demonstrated that the reasons which were given in the report of this committee at the last Congress as to the necessity for the proposed legislation did not in fact exist; they existed only in the stamped imagination of the prohibitionists.

There is no reason therefore why the prohibition laws in the various States of the Union should not be as vigorously enforced to-day as they ever were prior to the original-package decision. If they were not so enforced it must be due to the lack of moral sentiment behind those laws to stimulate which this national legislation is sought.

Such being the state of the law with reference to the right to prohibit sales, it occurs to me that the real grievance of the prohibitionists is not against the interstate-commerce clause of the Federal Constitution or any clause of the Constitution, but against the law of "sales."

Roughly speaking, a sale is a contract, and a contract is a meeting of the minds, and therefore the sale is effected at the place where the minds meet.

Applying these principles of the law of sales, the United States circuit court of appeals of the fifth circuit decided, in the case of *De Bary v. Souer* (101 Fed. Rep., 425), that where a wholesale liquor firm located in the city of New York received at their place of business orders for liquor, and accepts them there, the sale is made there and not elsewhere, no matter where the goods may be delivered. This was the case, I may state, brought against the United States involving the recovery of a tax paid under the internal-revenue laws which had been assessed for carrying on the business at another place than New York; and all these cases to which I am calling attention are cases that have arisen under the United States internal-revenue laws. The Department is enforcing these laws, seeking as far as possible to require people who are carrying on the business of selling to pay the special tax to the Government for carrying on such business.

To the same effect is the judgment of the United States circuit court of appeals for the ninth circuit in the case of *United States v. Chevalier*, 107 Fed., 434, wherein it was held that where a wholesale liquor dealer located in San Francisco receives orders from his traveling salesman in Oregon which are accepted and filled at the place of business in San Francisco the sale is made and the liquor is sold in San Francisco and not in Oregon.

To the same effect is the judgment of the United States court in Iowa in the very case referred to in the argument on the floor of the House by Judge Smith in the last Congress.

The liability for the special tax under the United States internal-revenue laws is for carrying on the business of selling, and it has been held under those laws that making a single sale incurs the liability. (See *Ledbetter v. U. S.*, 170 U. S., 606.)

The case in question is that of the *United States v. Adams Express Company* (119 Fed., 240).

In this case the Adams Express Company was indicted in Iowa under the United States internal-revenue law for carrying on the business of selling liquor without having paid the special tax on account of carrying what is known as a C. O. D. shipment from Dallas, Ill., to Birmingham, Iowa. The court in that case held that the interstate-commerce clause of the Constitution was not involved, and the only question was whether the defendant by carrying such a shipment and receiving the purchase price had sold the liquors.

The decision of the court was that the sale had been made by the party who delivered the shipment to the express company in Illinois, and that that conclusion of the court was in perfect harmony with the decisions of the supreme court of Iowa itself, stating the law of "sales."

In other words, it holds that the general principles as to the place where a sale is made are not affected by the fact that the payment is to be in cash when delivered.

To the same effect is the judgment of the United States court in

Kentucky in the case of *United States v. Parker* (121 Fed., 596), which was also a case of C. O. D. shipment.

And, finally, to the same effect is the very recent decision of the Supreme Court of the United States in the case of *Norfolk and Western R. R. Co. v. Sims*, decided December 7, 1903, and reported in No. 4 of the advance sheets of the October term, January 15, 1904.

In that case the Supreme Court says:

A sale really consists of two separate and distinct elements. First, a contract of sale which is complete when the offer is made and accepted; and second, a delivery of the property which may precede, be accompanied by, or follow the payment of the price as may have been agreed upon between the parties. The substance of the sale is the agreement to sell and its acceptance.

And though the shipment was a C. O. D. shipment, the court held that the sale was made where the order was received and accepted.

Such transactions as are referred to in these authorities can not offend against the police regulations of any State which are limited to prohibiting the selling or the carrying on of the business of selling intoxicating liquors in such State, and no State legislation can have any effect upon or control such a transaction unless the State legislation can be given extraterritorial force and effect, and any State law which attempts this, with or without the aid of Federal legislation, necessarily abandons the legitimate domain of the police power and enters the realm of interstate-commerce regulations. (*Rhodes v. Iowa, supra.*)

This is an impossible feat, for three reasons; and this brings us to my second position:

First. No State law can possibly have any greater extraterritorial force than any other State law, and therefore if the law of one State should forbid a thing to be done beyond its territorial limits which under the laws of a sister State could or should be done, an irreconcilable conflict instantly arises.

As was said in the case of *Bowman v. C. and N. W. Ry.* (125 U. S., 465):

In the present case the defendant is sued as a common carrier in the State of Illinois, and the breach of duty alleged against it is a violation of the law of that State in refusing to receive and transport goods which, as a common carrier, by that law it was bound to accept and carry. It interposes as a defense a law of the State of Iowa which forbids the delivery of such goods within that State. Has the law of Iowa any extraterritorial force which does not belong to the law of the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter?

Second. Independent of this irreconcilable conflict it would amount to regulating interstate commerce on the part of the State over and above the enforcement of any police regulation. This the State can not do, nor can such power be delegated by Congress.

As was said in the case of *In re Rahrer* (140 U. S., 560)—

It does not admit of argument that Congress can neither delegate its own powers nor enlarge those of a State.

And third, because it would have the effect of abridging the personal right guaranteed by the Constitution itself of bringing into a State wines or liquors for one's own use.

In the case of *Vance v. Vandercook* (170 U. S., 438) the Supreme Court, in holding that part of the South Carolina dispensary law uncon-

stitutional which interfered with the right of a citizen to ship into the State for his own use and in holding the rest of the law constitutional, said, discussing the rest of the law:

But the weight of the contention is overcome when it is considered that the inter-state-commerce clause of the Constitution guarantees the right to ship merchandise from one State to another and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which does not allow State authority to attach to the original package before sale, but only after delivery.

Scott v. Donald, supra; Rhodes v. Iowa, supra. It follows that under the Constitution of the United States every resident of South Carolina is free to receive for his own use liquor from other States, and that the inhibitions of a State statute do not operate to prevent liquors from other States from being shipped into such State on the order of a resident for his use. This demonstrates the unsoundness of the contention that if State agents are the only ones authorized to buy liquor for sale in a State, and they select the liquor to be sold from particular States, the products of other States will be excluded. They can not be excluded if they are free to come in for the use of any resident of South Carolina who may elect to order them for his use.

The products of other States will be, of course, excluded from sale in the original packages in the State, but as the right of the State to prevent the sale in original packages of intoxicants coming from other States, in consequence of the State law forbidding the sale of any but certain liquor, attaches to the original packages from other States by virtue of the act of Congress, the inability to make such sales arises from a lawful State enactment. To hold the law unconstitutional because it prevents such sales in the original package would be to decide that the State law was unconstitutional because it exerted a power which the State had a lawful right to exercise. Indeed, the law of the State here under review does not purport to forbid the shipment into the State from other States of intoxicating liquors for the use of a resident, and if it did so it would upon principle, and under the ruling in *Scott v. Donald*, to that extent be in conflict with the Constitution of the United States.

It is argued that the foregoing considerations are inapplicable, since the State law now before us, while it recognizes the right of residents of other States to ship liquor into South Carolina for the use of residents therein, attaches to the exercise of that right such restrictions as virtually destroy it.

But the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest upon the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we shall hereafter examine this contention—then they are void. If they do not, then there is no lawful ground of complaint on the subject.

It further appears that the right to ship for private use was conditioned upon obtaining a certificate from a chemist, and the court held that this was an unlawful restriction upon this constitutional right to ship for private use, and therefore void.

But it is worthy of note that the holding of the balance of the dispensary law of South Carolina constitutional hinged upon the proposition that the right to make an interstate shipment for personal use was founded in the Constitution and not upon any legislative grant. Had it been otherwise, the logic of the opinion is that the entire law would have been held unconstitutional.

Now, we have already seen that so far as the right and the power to prohibit sales of intoxicating liquors in prohibited districts is concerned the present laws are not only ample, but are precisely what they were before the alarming original package decision was rendered, and furthermore, that they are all sufficient to accomplish the purposes alleged to be accomplished by this bill. There is therefore no necessity for this law.

It only remains for us to see whether the proposed law goes beyond those purposes and falls within the condemnation of the authorities cited.

Under the construction of the law in the case of *Rhodes v. Iowa* a citizen of Iowa is entitled to receive an interstate shipment of liquor, and the police power of the State can not touch it before it is delivered to him. If he has ordered it for his own use he can consume it, but if he has ordered it to sell a State law is violated when he sells, and it only remains for the local authorities to enforce the law against him for so selling.

This natural and reasonable distinction between the right of an individual to receive for his own use and the power of the State to punish him if he sells, even though in the original package, thus establishing a clear line of demarcation between legitimate police regulations and the regulations of interstate commerce, is brought about by the construction given the Wilson Act by the Supreme Court, wherein the words "upon arrival in such States" are declared to mean "arrival at the point of destination and delivery there to the consignee."

The proposed law not only inserts the words "before and after delivery" in the present Wilson law, but adds a second section, which in express terms asks that the nonresident shipper and the nonresident common carrier engaged in interstate commerce shall be amenable to the police regulations of the State into which shipments of liquor are made.

It would be hard to conceive of more vicious legislation, because not only does it propose to produce that irreconcilable conflict between State laws, but it proposes to submit interstate shipments to State control without necessarily touching upon the right to sell, the unconstitutionality of which needs no argument to demonstrate.

In the case of *Rhodes v. Iowa*, page 426, the court says:

We think that, interpreting the statute by the light of all its provisions, it was not intended to, and did not, cause the power of the State to attach to an interstate shipment while the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery thereto to the consignee, and of course this conclusion renders it entirely unnecessary to consider whether, if the act of Congress had submitted the right to make interstate-commerce shipments subject to State control, it would be repugnant to the Constitution.

This is to indicate clearly that an act of Congress purporting to submit such shipments to State control before delivery would be submitting the right to make interstate commerce shipments subject to State control; but more than this, if the right is given to subject such shipment to State control before delivery, how are the rights of the individual who may ship for his own use protected?

It is alleged by its advocates that this bill would not interfere with such right.

A present law of Iowa, and one which was under discussion in the case of *Rhodes v. Iowa*, is as follows:

If any express company, railway company, or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation any intoxicating liquors, without having first been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed, or delivered is authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any agent of said company, corporation, or person so offending shall, upon conviction thereof, be fined in the sum of \$100 for each offense,

and pay costs of prosecution, and the costs shall include a reasonable attorney fee, to be assessed by the court, which shall be paid into the county fund, and stand committed to the county jail until such fine and costs of prosecution are paid.

The offense herein defined shall be held to be complete, and shall be held to have been committed in any county of the State through or to which said intoxicating liquors are transported, or in which the same is unloaded for transportation, or in which said liquors are conveyed from place to place or delivered. It shall be the duty of the several county auditors of the State to issue the certificate herein contemplated to any person having such permit, and the certificate so issued shall be truly dated when issued, and shall specify the date at which the permit expires, as shown by the county records: *Provided, however,* That the defendant may show as a defense hereunder, by preponderance of evidence, that the character and circumstances of the shipment and its contents were unknown to him.

This law makes no distinction between a shipment to a person for his own use and a shipment to a person who intends to sell the liquor after he receives it. It makes every shipment absolutely unlawful unless the shipment is accompanied by a certificate issued by the proper State officer to the effect that the consignee is authorized to sell. If the consignee is ordering for his own use, he does not want to sell, and could not get the certificate.

It is clear, therefore, that the proposed legislation, in connection with possible State legislation, not only goes much further than the alleged purpose of its advocates, but as legislation it would be more objectionable than that under consideration in the case of *Vander v. Vandercook*.

In that case, while the right of the individual was restricted, it was possible to obtain a certificate under which a shipment could be obtained for private use. Under the proposed combination of laws it would be absolutely impossible. And yet, notwithstanding such impossibility in the case of the South Carolina law, the court held that there could be absolutely no restriction upon the right to ship for private use, because such right rested on the Constitution. Mark you, "on the Constitution," and not on legislative enactment, and of course that covers Congressional as well as State enactments. That which is founded on the Constitution can not be abridged by an act of Congress.

In view therefore of the premises from which there seems no escape from the conclusions that there exists no such necessity for this legislation to accomplish only what this is alleged to accomplish, as was thought to exist at the time this bill was reported from the committee in the last Congress, and that even if it were not constitutional that the bill goes much further than was alleged to be its purpose, I ask this committee, How can you be expected to favor it?

It seems to me that the gentlemen of this committee should say to these reformers: Go first to the State and pass a law against drinking, and when you have done that, then come and ask Congress to help you enforce such a provision; because no matter from what standpoint you approach this question, no matter from what point of view you discuss it, it always resolves itself in the end to the question, "Shall you prohibit the right of the individual to consume or drink what he sees fit?"

Mr. LITTLEFIELD. On that precise point, as to the element of personal use, you are aware of the fact that the proposed bill does not in that respect differ from the existing law; that is to say, the law as it now stands?

Mr. CLAYTON. The Wilson law.

Mr. LITTLEFIELD. Yes; the Wilson law. "Or remaining therein for use and consumption or sale." That is the language that takes care of the question presented to us. That is now in the Wilson bill. What would you say about that?

Mr. HOUGH. I say that in connection with the law of Iowa, which this is designed to supplement, it could not get there for use or anything else, because the man who is going to use it can not get the certificate under the law of Iowa.

Mr. LITTLEFIELD. But take the general constitutional features of the law as it stands to-day. That evidently applies to the original package after delivery beyond all question, "remaining therein for use, consumption, and sale." So all the consequences you have in mind are absolutely now involved under existing conditions.

Mr. HOUGH. Then the words "before or after delivery" are not necessary?

Mr. LITTLEFIELD. Oh, no; the words "before or after delivery" simply allow the State jurisdiction to attach before it now attaches. The original package is simply one of the elements of interstate commerce, the courts have held. Instead of attaching to that element as at present the pending bill allows the State authority to attach earlier, at a different stage of interstate commerce. But the language you have been criticising—I heard the last part of your argument and I have been very much interested in it—involving the element of personal use, is already a part of the law and the proposed statute does not change it.

Mr. HOUGH. The protection, I gather from your remarks, you seem to think is afforded this kind of a case I have been discussing could not possibly apply until after the goods get there; but if you give the State a right to stop them at the State line they never could get there. So those provisions could never have any force or application.

Mr. LITTLEFIELD. They do have now.

Mr. HOUGH. Yes; but though you do not change the law, as I stated in the beginning, you have already restored the condition of things just as it was before this decision in *Leisy v. Hardin* was handed down by the Supreme Court, which was stated to be the necessity for the proposed law.

Now, I say that the distinction that was drawn between the right to prohibit the sale in the original package and the right to prohibit the shipment was the only thing—I state that as my opinion as a lawyer—which saved the constitutionality of the Wilson law; because the court said in the Rhodes case, as plainly as it is possible to say anything in that way, that if the Wilson law meant "before delivery" it would have had the effect of submitting the question of regulating an interstate shipment to a State. It does not say what it would have decided if they had felt compelled to give it that construction; but we not need to be told what they would have decided, because in the cases I have cited it is said that no part of the power could be delegated, and that would be delegating a part of the interstate-commerce power to the States.

Mr. LITTLEFIELD. Had not the court prior to the Rhodes case held that the original package was a part of interstate commerce?

Mr. HOUGH. I have covered that. They said it was an incident to interstate commerce.

Mr. LITTLEFIELD. Whether it was incident or not, had they not held in so many words that it was a part of interstate commerce and a necessary incident?

Mr. HOUGH. In the License cases (5th Howard) it was held that notwithstanding they were in the original package, they were subject to State legislation as soon as they arrived within the State, and that continued to be the law of this country for about fifty years. When the case of *Leisy v. Hardin* was handed down, following the logic of the opinion in the *Bowman v. Railroad* case (and of course when they had that before them they could not escape from the conclusion), they reversed the case of *Pierce v. New Hampshire* and held that the right to ship carried with it of necessity the right to dispose of the thing in the original package.

Mr. LITTLEFIELD. But did not that decision hold that the original package was a necessary part of interstate commerce?

Mr. HOUGH. The original package; yes.

Mr. LITTLEFIELD. Has that been overruled?

Mr. HOUGH. It has in the case of *Rhodes v. Iowa*.

Mr. LITTLEFIELD. That part has been overruled, you say?

Mr. HOUGH. In *Rhodes v. Iowa* they overruled it to the extent of saying that it is not an inalienable incident. They have said now that it is an alienable incident, and they can draw the distinction between the right of the State to enforce a police regulation and the right of a State to regulate an interstate commerce shipment, and that fine distinction can be drawn by saying that the State laws can attach "after delivery to the consignee," but not before delivery to the consignee, and that if you attempt to attach the State laws by legislative enactment to a shipment of that kind before delivery you are unquestionably giving the State the right to regulate interstate commerce shipments to that extent. That is a fine distinction, I will admit.

Mr. LITTLEFIELD. Is it your conception of the cases, *Rhodes v. Iowa* and the Dispensary case, that the court there held that the States can not exercise their police power in connection with the matter of transportation?

Mr. HOUGH. Only as it may be an inspection measure.

Mr. LITTLEFIELD. In *Rhodes v. Iowa* did not they expressly decline to so hold, and is it not a fact that all they did hold was that the statute in controversy did not apply to transportation in that specific sense?

Mr. HOUGH. I say that construction that was given by the Supreme Court was the only thing that saved the constitutionality of the Wilson act. If they had given it the other construction they say, as clearly as it was possible for them to intimate anything, that they would have held it unconstitutional as being a delegation of a part of the power which rests exclusively in Congress.

Mr. LITTLEFIELD. Do you go so far as to say that there is anything in the opinion which states that they would have held that to be unconstitutional?

Mr. HOUGH. I did not say that. I say they did not say whether, if they had had to give it that construction, they would have held it unconstitutional; but I say that as lawyers we do not have to be told that, though the Supreme Court did say it in the *Rahrer* case. They say if they had given it a different construction it would have amounted to delegating to the States the power to regulate an interstate ship-

ment. They say that in the case of *Rhodes v. Iowa*, and if they go that far we need not ask them how much further they would go in view of the decision in the *Rahrer* case.

Mr. LITTLEFIELD. I wish you would put in the language in the *Rhodes* case where they say that the original package is an inalienable incident.

Mr. HOUGH. They did not say that. I was giving my construction of the effect of the various decisions of the Supreme Court on this subject, and I say there was that distinction drawn which you may say is a fine distinction, in view of what they said in *Leisy v. Hardin*. That distinction was the only thing that saved the constitutionality of the act, however.

Mr. CRAIN. I would like to quote that language:

It is enough to say—

The CHAIRMAN. We have gone over that very thoroughly and we can not get into a discussion.

Mr. LITTLEFIELD. Let me see that.

(Mr. Crain handed a law book to Mr. Littlefield, pointing out the passage which Mr. Crain had just started to read aloud.)

Mr. HOUGH. Are there any further questions which the committee would like to ask me?

Mr. CLAYTON. There are no further questions I care to ask.

(Thereupon at 12.30 the committee took a recess until 2.30 o'clock p. m.)

AFTER RECESS.

The committee reassembled pursuant to the taking of recess, at 2.40 o'clock p. m.

Hon. John J. Jenkins in the chair.

Mr. DINWIDDIE. Mr. Chairman and gentleman of the committee, I should like to introduce a gentleman that needs no introduction, Mr. Smith, of Iowa.

STATEMENT OF HON. WALTER I. SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA.

Mr. Chairman and gentlemen of the committee, I had the pleasure this morning of listening for a considerable time to the very learned argument of Mr. Hough, of St. Louis, in opposition to this bill. Before I proceed to offer a few suggestions as to the bill itself I want to suggest, first, that the gentleman failed to draw any distinction between an act of the legislature which proposed to operate outside of the territory of the State and an act of the legislature which attempted to act within the territory of the State upon the subject of interstate commerce.

The statute to which he refers in my State, providing for permits being furnished to transportation companies before they accept shipments, was not intended and does not by any fair construction provide that a transportation company without the State must take no shipment except under those circumstances. It has never been the opinion of the people of Iowa that the legislature of Iowa can pass laws as to what should be done outside the State. We have never supposed that we could pass a law that a transportation company in Illinois had to have

certain evidence before it was justified in accepting a shipment into our Commonwealth.

I trust that I have made myself plain as to the distinction between a State enactment which proposes to directly control action without the State and a State enactment which is proposed to operate upon property within the State, but which may or may not be the subject of interstate commerce. I say this because I think it proper to here declare that there is not upon the statute books of Iowa and there never has been upon the law books of our State any law which prohibited any man from having liquors in his own possession for his own use, or from importing them into the State for that purpose, and if this law is passed it will have no such effect as contended for by Mr. Hough, because of the fact that there is no law of Iowa which would prohibit a man having liquors in his own possession for his use or importing them directly for his own use and benefit.

What is it that is thought to be reached by this bill? We have a law in Iowa which prohibits the keeping of intoxicating liquors for sale within that State. Up to the time that the case of *Leisy v. Hardin* was decided it was never dreamed in our State that there was any right to sell intoxicating liquors in a State simply because they were still in the original packages in which they were imported into the State. That decision came as a great surprise to our people. It is conceded by Mr. Hough that it was an overruling of fifty years' authority in the Supreme Court of the United States itself. When that announcement came as a surprise to the people of my State they discovered that everywhere against the will of the people in a particular locality men were establishing original package houses and there conducting this traffic without taxation, without any restriction, retailing liquors everywhere.

They came to Congress, and it may not be an unnecessary delay of these proceedings to say that after the Senate had passed the so-called Wilson bill and it came to this House, this committee reported a substitute for the Wilson bill, which in my judgment ought to have become the law, a bill which eliminated the whole question of intoxicating liquors from the subject-matter of it, and provided that all commodities of every kind and nature after they arrived in a State should be subject to the police powers of the State. When that bill was brought out of this committee it passed the House, but the Senate refused to concur in it, and it was necessary for the House to accept the Senate bill.

From that day until the decision in the *State v. Rhodes* there was no trouble with this question anywhere. It was supposed by everybody everywhere that the Wilson bill authorized the communities to regulate their domestic affairs according to their own will and pleasure so far as the sale of intoxicating liquors was concerned. When the Rhodes case was decided no serious harm was done by the rule there laid down as applied to the facts of that case. But this decision was a revelation to men who wanted to defy the public sentiment and the will of local communities everywhere, and they devised numerous schemes, coming within the ruling of the Rhodes case, by which liquors might be generally retailed in dry communities.

It is not my purpose to review those methods at length to you, but I spoke of some of them in the House a year ago, and the committee

I doubt not has heard of the uses and the abuses to which the Rhodes case has been put. With all due deference to the majority of the Supreme Court, the Rhodes case, in my judgment, declares contrary to the true intent and meaning of the Wilson bill, that liquors have not arrived in the State until they reach their destination—and with that I have no complaint—but "until they are delivered to the consignee." In my judgment delivery to the consignee is no part of the arrival of liquors anywhere.

But that decision enabled the liquor dealers who wished to defy the local sentiment to ship liquors to themselves, or to ship them to fictitious persons, or to ship them to X, Y, or Z, and the liquors, although held in the State solely for sale, and being the very class of liquors that the Wilson bill clearly sought to subject to the State laws, could there be held and protected under this decision against the enforcement of the State laws and sold in defiance of them if sold before delivery, and if the consignor was consignee he had no difficulty in delaying delivery until he had the goods sold.

There never was any delivery until the goods were sold.

That was not the purpose. The purpose was to keep them in the express office until they could be sold. And so a stock was piled up in these communities, there to be sold in defiance of State law, because under the decision in the Rhodes case they were entitled to protection until delivery to the consignee.

I may say that, in my judgment, with proper judicial interpretation some of these evils might have been avoided. I know it was at one time the rule in some of the district courts of Iowa that, where there was no intention that the goods should ever be delivered to the consignee, but that the bill of lading should be transferred to some person, that decision of the Rhodes case should not apply, and the liquors were destroyed.

Mr. GILLETT, of California. How many years ago?

Mr. SMITH. Some years ago. I think now that this is a palpable evasion of the Wilson law, and that where liquors are sent with no intent that the consignee shall be the consumer they are subject to the police regulations of the State, and I trust when the question comes before the Supreme Court of the United States, if it does, that the Supreme Court will so hold. It is perfectly manifest that these liquors that are thus shipped to fictitious parties, or shipped to the consignor for sale in the State, are the very liquors that the Wilson bill was enacted to reach. There is nobody that will question that, and yet this construction in the Rhodes case makes it impossible to reach those liquors if they are sold before delivery to the consignee.

This bill does not attempt to do a solitary thing that was not the settled purpose of Congress to do in the passage of the Wilson bill. It simply seeks to stop, not the importation for personal consumption, but the sale of the liquors by this device, which is based upon the decision in the Rhodes case.

This is not a prohibition measure; it is not a temperance measure. It is simply and solely a bill to restore local self-government upon this subject to the several communities of the United States. It will scarcely be claimed by anyone that the framers of the Constitution, when they conferred upon Congress power to regulate commerce between the several States and with foreign nations, dreamed that that

was a provision under which by refined construction every business deemed by a State injurious to public health or the public welfare could be imposed upon every community in that State. And yet, if you say you will not permit the States to enforce their laws against liquors imported, not for consumption by the importer, but imported for the purpose of sale within the State, that is a result of this provision of the Constitution.

Mr. ALEXANDER. Under this bill would not liquors be stopped at the border of Iowa?

Mr. SMITH. They certainly would not and could not be unless they were imported for sale, because there is no law of Iowa, and never has been any law of Iowa, which made liquors contraband, and unless they were kept for sale within the State—

Mr. POWERS. And upon whom would be the burden of proof as to the purpose for which the liquors were sent into the State—the State authorities or would it be the consignee?

Mr. SMITH. I want to be frank. I am of the impression that there is a provision of the Iowa code that liquors not in a dwelling house or some place of like character are presumed in the first instance to have been kept for sale, but that is a mere turning of the burden of proof. I have not examined that statute with this in mind, but I have that impression in mind.

Mr. POWERS. Would that presumption apply to goods in transit?

Mr. SMITH. I would not want to answer that question because I do not feel certain enough whether I would be right. My impression is that the statement is worded something like this: That intoxicating liquors in any place except a private dwelling, or some place like that, shall be presumed in the first instance to be kept for sale.

Mr. LITTLEFIELD. Of course that is the rebuttal presumption.

Mr. SMITH. Yes. It simply shifts the burden of proof at the most.

Mr. GILLETT, of California. If Iowa has the law can not Iowa stop liquors for personal use at the border?

Mr. SMITH. I do not think it could under this law, and it seems to me that is purely an academic question, as no State in this Union has ever attempted to say a man should not drink or have liquors for his own use.

Mr. GILLETT, of California. In construing this have we not the right to take into consideration every conceivable law that a State has a right to pass?

Mr. SMITH. I presume that in construing it you have the right to imagine all the laws that could possibly be devised that might be followed under it.

Mr. PEARRE. That would raise a question of constitutionality which would be decided in the court?

Mr. SMITH. Yes.

Mr. POWERS. Returning to the question of presumption, suppose I should in the goodness of my heart ship you a case of whisky from Massachusetts; the authorities of Iowa would have the right under the provision of this law to make a seizure of that under your present statute law?

Mr. SMITH. They would have a right to seize it upon the sworn statement being filed that those liquors were there and held for sale in violation of the laws of Iowa. That is the only circumstance, and if

you send it to me for my own consumption that would be a falsehood, and I have not any presumption that any good citizen of Iowa would make that false affidavit, and if anyone did he could not prove it.

Mr. POWERS. Do you think the courts would take judicial notice?

Mr. SMITH. I do not think they would, but I am perfectly certain that those liquors would not be condemned and you are safe in sending them.

Mr. LITTLEFIELD. The affidavit would necessarily have to be made after the liquor arrived?

Mr. SMITH. Yes.

One other matter I want to call to the attention of the committee particularly, and that is while Mr. Hough cited cases of C. O. D. shipments to show the sale took place at the place of consignment and not at the destination of the goods, and on that cited the opinion of Judge McPherson, a former member of this House, who was judge of the southern district of Iowa, yet he, through ignorance of the fact, failed to call attention to the fact that the supreme court of Iowa, by unanimous decision, has decided otherwise. The supreme court has unanimously held that where goods are shipped into our State C. O. D. for the cost price that that constitutes a sale within the State of Iowa and not a sale within the foreign jurisdiction. And notwithstanding the dissenting opinion of my distinguished friend and former member of this House sitting nisi prius, that is there the law of the land.

Mr. HENRY. What case?

Mr. SMITH. I can not state it. It is a very recent case and has attracted great attention in my State, but I can not state it from memory.

Mr. HENRY. The Supreme Court of the United States?

Mr. SMITH. Of Iowa. The supreme court of Iowa has held that, and so these shipments to these various parties are illegal in the State.

Mr. LITTLEFIELD. And are sales in the State of Iowa?

Mr. SMITH. Are sales in the State of Iowa.

We can not do anything to protect ourselves against them, because under the decision in *Rhodes v. Iowa* these liquors are the subject of interstate commerce until after delivery to the consignee.

In the town where Colonel Hepburn lives, at a time when I had the honor of presiding on the bench of that district, the express companies' agents refused to carry on this traffic under the system they had devised, that system being to ship 100 jugs to X at Coronado, and send a letter to the express agent to deliver them to anybody that would pay the C. O. D. charges.

Mr. PEARRE. X representing the unknown quantity?

Mr. SMITH. Yes.

Mr. GILLETT, of California. What we want to do is to eliminate X.

Mr. SMITH. When the agent of the express company refused to do that, the express company removed him from his office as agent to that town and appointed a more pliable agent, and thereupon the grand jury indicted the new agent and he went to jail, and then the express company consented to restore the man who would not carry on this traffic in defiance of the laws of the State.

The supreme court of Iowa enjoined these express companies because of this identical method I have stated to you. They were defying the laws. I am not here to assail express companies, but it does seem to

us that great express companies are in small business when they put an agent in a town with a view only to the fact that he is willing to retail intoxicating liquors over the desk of the express company as a bar, without even paying the mulct tax imposed by our State upon the sale of intoxicating liquors.

Unless this committee says now that the Government of the United States ought to impose such conditions upon us, this bill, or substantially this bill, ought to be reported.

We are not asking the United States to pass any laws governing our people. We are not asking you to even delegate any power to our State, as contended this morning. I am not here as a lawyer to contend that the Congress of the United States can delegate its powers to the State or that it can enlarge the powers of the State. I am here contending that the Congress of the United States, having discovered from the Supreme Court that this is that interstate commerce which was covered by the clause in the Constitution, ought not to impose upon the people of every community this business against their will. You are proposing by the defeat of this measure to say to every community in the United States that whether the people want this traffic or not it shall be imposed upon them under the authority of the United States.

Now, we simply ask to be relieved from that. I live in a city as hostile to prohibition as St. Louis and where the mulct law is in force, and saloons are running all the time. This is not a question as to whether saloons are to run or not to run. It is a question of whether the United States Government is going to forcibly impose upon every local community this business against their will and their wish.

If that is not the purpose, then this or some similar bill ought to pass. If it is the purpose to thrust this business upon unwilling communities, then you ought to take no action.

It seems to me the question is a very simple one. We want to get it out of our minds that it is a question of temperance or intemperance, prohibition or license. It is just simply a question of whether the high powers of the Federal Government are to be exercised to impose this business upon people who do not want it; whether we are to have local self-government in this country upon the liquor traffic or not.

Now, with these few suggestions, which have been hastily made, because I did not know until a few moments ago that I was going to speak to you upon the subject, I am ready to close, unless there are some questions.

Mr. DE ARMOND. I do not understand exactly what change you think the passage of this bill would make in existing law.

Mr. SMITH. I think under this bill if liquors were shipped to Iowa C. O. D., either to a consignor or to a consignee, who intended to sell them, or to X or any other fictitious person, so that the liquors were in the State not for consumption by the consignee but for sale, they would be subject to the laws of the State and would be subject to confiscation by the State.

Mr. DE ARMOND. Does this bill make any addition on that point at all?

Mr. SMITH. It does in this respect: It provides that they are subject to this police regulation of the State before and after delivery, whereas the Rhodes case holds that they can not be touched until after

delivery to the consignee, and where it is the deliberate purpose not to have a delivery to the consignee, as it is where this trouble occurs, the liquors can not be reached by the law.

Mr. DE ARMOND. Does not that get to the real question of the constitutionality that is involved, What is the interstate commerce in a particular transaction? For instance, a man in Iowa—at Iowa City—orders liquors from Rock Island, on the other side of the river. What is the interstate commerce in that article between those two people and those two points?

Mr. SMITH. If I should answer that as to my own opinion, it would be this: That when these liquors reached the point of destination they passed into the hands of the railroad and express company as warehousemen if not delivered within a reasonable time, and they ceased to hold them as carriers. But I know there is authority against me.

Mr. DE ARMOND. The delivery would be Iowa City in that case?

Mr. SMITH. Yes.

Mr. DE ARMOND. Would this bill, providing it is constitutional, permit the State of Iowa to take charge or take control of those liquors when the car containing them crosses the bridge between Rock Island and Davenport, when they got into Iowa?

Mr. SMITH. It is not the purpose of the law to reach them until they reach their destination.

Mr. DE ARMOND. I was talking about the terms of the bill. It says the boundary of the State.

Mr. SMITH. It says after they arrive within the State they shall be subject, and so forth.

Mr. DE ARMOND. No; it says the boundary of the State.

Mr. LITTLEFIELD. It is before "and after delivery."

Mr. CLAYTON. It is like the Wilson bill.

Mr. SMITH. It is identical with the Wilson bill.

Mr. DE ARMOND. The Wilson bill reads "within the State."

Mr. HENRY. The Wilson bill said "within the State."

Mr. SMITH. I do not know that anybody can claim that there is any difference between arriving in the State and arriving within the borders of the State or within the boundary of the State. It is not intended to be different, I do not think; I think it was intended to practically follow the Wilson bill.

Mr. HENRY. The other was upon arrival in the State and this is upon arrival within the boundaries of a State.

Mr. SMITH. In my judgment there is no objection on the part of any one to striking out the word "boundary" so as to make it conform to the Wilson bill.

Mr. CLAYTON. "Shall upon arrival in such State or Territory," and this bill says "boundary?"

Mr. SMITH. I would be glad to have anyone tell me the difference.

Mr. DE ARMOND. I was wondering what the words meant. They are in one and not in the other.

Mr. SMITH. The only change, practically, is the "before and after delivery."

Mr. POWERS. Under the laws of your State the seizure could be made of goods in transit as soon as they passed the boundary line?

Mr. SMITH. I presume if you could catch them it could; yes, but it may be difficult for a man to get an affidavit on file after they get in

and seize them. There is, perhaps, that practical difficulty, but otherwise not. We can not stop the trains engaged in interstate commerce under this bill.

Mr. GILLETT, of California. How are you going to stop the liquor?

Mr. SMITH. We do not propose to stop the liquor; there is no thought of stopping it until it gets to its destination.

As a matter of fact I will say that upon reflection I recall now when this bill was written (I knew something about its origin) there was this thought about this matter, that liquors might, for instance, be consigned to Harlan, north of the town of Avoca, and it was thought that these liquors might be consigned and instructions given to leave them off at Avoca and there sell them. They have to be unloaded there anyhow, because there are nothing but branch trains running up from there, and they have to be unloaded there and put in the warehouse or upon the platform preparatory to reloading them and shipping them to the town of Harlan. It was thought at the time this bill was drafted—I recall that now—that perchance these gentlemen who are laboring only for the rights of man would discover, as they made a number of discoveries under the Rhodes law, that the best thing to do was to consign these goods to Harlan and then never deliver them at Harlan, just as they can send them to the consignee and not deliver them to the consignee now; that the same device they have gotten up to defy the law now would evade it then if they consigned goods to Harlan and dropped them off at Avoca, and that perhaps they ought to be subject to seizure at Avoca.

Mr. GILLETT, of California. They could be seized anywhere within the boundaries of the State.

Mr. SMITH. I grant you that, but practically they can not be seized except where they stop.

Mr. GILLETT, of California. Under the police regulations, if they were bringing in things that were bad, could you not stop them?

Mr. SMITH. No.

Mr. GILLETT, of California. Suppose they were bringing in diseased cattle.

Mr. SMITH. You could do it then under the police regulations, yes.

Mr. GILLETT, of California. Is not this just as bad?

Mr. SMITH. I think not; I do not think it would be under the same rule.

Mr. DE ARMOND. It is not so contagious.

Mr. GILLETT, of California. Suppose this bill became a law; in your opinion would it amount to a surrender of the authority of the United States? It has been suggested here that that is the trouble, that it would be unconstitutional on that account.

Mr. SMITH. The trouble is the people do not make distinctions between surrendering the powers of Congress and exercising the powers of Congress.

Mr. GILLETT, of California. Is Congress doing anything in the matter at all; is it not turning it over to the people?

Mr. SMITH. Yes; Congress is exercising its power under the interstate-commerce law.

Mr. GILLETT, of California. If that is true, Congress has the right to delegate to any State the control of any goods?

Mr. SMITH. Congress has no power to delegate to a State any power whatever, and yet Congress is constantly passing laws for the Federal

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courts sitting as courts of common law, that they shall conform in practice and procedure to the rules of the State courts, and that is an exercise of Federal power and not a delegation of Federal power.

Mr. GILLETT, of California. Do they not delegate power when they permit a State to interfere with interstate commerce?

Mr. SMITH. Not any more than when they give Iowa, as they have done, the right to institute rules of procedure in the courts of common law.

Mr. GILLETT, of California. Where do you get your authority, then, to stop goods at the border of the State?

Mr. SMITH. You are talking about the constitutionality of this law. We will take care of ourselves if you have not any law that prevents our taking care of ourselves. We are not asking you to take care of us; we are asking you not to interfere with us.

Mr. GILLETT, of California. Suppose this law was not passed. Could you interfere with interstate commerce in any article to be delivered in Des Moines, Iowa?

Mr. SMITH. We could not because of the absence of this law, of the absence of the exercise of power to regulate commerce.

Do you understand what the distinction is between a delegation of Federal power and the Federal Government saying that your Federal courts of common law in your State shall be governed by the same laws and the same procedure and the same rules of practice as provided in the State courts? Is that a delegation to the State of Federal power? Has the State any jurisdiction to pass laws governing Federal courts of common law and their methods of procedure? You are passing laws of that kind all the time, and they are exercising legislative power, and it is not a delegation of power.

I do not suppose, if there was an absolute prohibition on the State, that the Federal Government would do that. There is no prohibition on the State doing these things. The only disability that the State labors under is that the power is vested in the Federal Government.

Mr. GILLETT, of California. Suppose the power is vested in the Congress; that all rules of procedure shall be under an act of Congress?

Mr. SMITH. Then I say it would be a valid exercise of that power, and that is so held everywhere, and that is so with the rules of procedure everywhere in this country. It is provided that they shall be governed by the State laws and rules.

Mr. DE ARMOND. The State law to that extent is made a Federal law?

Mr. SMITH. The State law is made a Federal law. If it is not a delegation it is an exercise of power, and that is all we want here. This is a delegation.

I have admitted you could not confer additional powers on the State, and could not confer any powers on the State; but this is simply an exercise of the power that you shall not interfere with us in the exercise of our own laws and against goods within our own jurisdiction.

Mr. LITTLE. Then the court held in Rahrer that it was not a delegation of power?

Mr. SMITH. Not at all a delegation of power.

Mr. BRANTLEY. What is the law in your State about a transportation company having to be furnished with a certificate?

Mr. SMITH. It is a Territorial law. The railroads within our State have to have them. We were never foolish enough to dream that we

could pass a law that would govern the conduct of corporations outside the State.

Mr. BRANTLEY. Suppose goods come in from outside the State without a certificate, will your law require the company to have the certificate after it reaches the boundary line, or can they go on?

Mr. SMITH. I think they can go on, but under this law I think they would get caught in the act.

I hope the committee draws the distinction between our trying to pass a law which operates extraterritorially and a law which operates within our territory on the subject of interstate commerce. We do not claim that we can pass any laws that operate extraterritorially in that sense as to require corporations out of the State to get permits.

Mr. BRANTLEY. The point was, an interstate commerce shipment starting to some point in your State at the starting point of course requires no certificate?

Mr. SMITH. That is true.

Mr. BRANTLEY. Yet before the shipment can be delivered or delivery can be completed, your law requires a certificate or it becomes unlawful for the railroad to hold it?

Mr. SMITH. Yes; I think that is probably true. I have not carefully examined that particular statute since this matter arose, but that is my recollection of it.

I thank the committee for their attention.

STATEMENT OF MR. ANDREW WILSON, OF WASHINGTON, D. C.

Mr. Chairman and gentlemen of the committee, perhaps I am unfortunate in not having been present at the sessions of the committee and hearing the arguments of those who have been opposing this bill.

Probably the greatest difficulty that has arisen in relation to it is by failure to properly discriminate as to the powers which are granted to the General Government and those which are granted to or retained by the States.

Unquestionably the people of the United States are sovereign and had all the authority that any independent or sovereign State may have or exercise. The power of sovereignty has been delegated in part to two forms of government—one to the Federal Government, which finds its expression in the Constitution of the United States as adopted by the States and by the people and the laws which are passed in pursuance of that Constitution (these and treaties are declared to be the supreme law of the land); the other to the State governments. Each is supreme within its own sphere of delegated sovereignty.

It was my privilege some time since to make a careful examination of the constitutional provision regulating interstate commerce and to study the judicial construction thereof.

To begin at the very foundation of the matter it is just as well to go to the leading case on the subject, *Gibbons v. Ogden*, reported in 9 Wheaton, 1. On page 189, Mr. Chief Justice Marshall, who was called upon to pass upon the meaning of this clause in the Constitution, said:

Congress shall have power to regulate commerce among the several States and with foreign nations and with the Indian tribes. The subject to be regulated is commerce, and our Constitution being, as so ably said at the bar, one of enumeration and not of definition, to ascertain the extent of the power, it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buy-

ing and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce undoubtedly is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse.

And again from the same opinion:

We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than those that are prescribed in the Constitution.

What limitations to the exercise of the power by Congress to regulate commerce does the Constitution prescribe? None.

Mr. Chief Justice Marshall says:

These are expressed in plain terms and do not affect the questions which arise in this case or which have been discussed at the bar. If, as has been always understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.

The wisdom and the discretion of Congress, their identity with people and the influence their constituents possess at elections are in this as in many other instances, as, for example, in declaring war, the sole restrictions on which they have relied to secure them from its abuse. They are the restrictions on which the people must often rely solely in all representative governments.

And in that same case Mr. Justice Johnson, in delivering a concurring opinion of the court (opinions were delivered *seriatim* then), said:

The "power to regulate commerce" here meant to be granted was that power to regulate commerce which previously existed in the States. But what was that power? The States were unquestionably supreme, and each possessed that power over commerce which is acknowledged to reside in every sovereign State.

The definition and limits of that power are to be sought among the features of international law; and as it was not only admitted, but insisted on by both parties in argument, that, unaffected by a state of war, by treaties, or by municipal regulations, all commerce among independent States was legitimate, there is no necessity to appeal to the oracles of the *ius commune* for the correctness of that doctrine. The law of nations, regarding man as a social animal, pronounces all commerce legitimate in a state of peace until prohibited by positive law. The power of a sovereign State over commerce, therefore, amounts to nothing more than a power to limit and restrain it at pleasure. And since the power to prescribe the limits to its freedom necessarily implies the power to determine what shall remain unrestrained, it follows that the power must be exclusive. It can reside in but one potentate, and hence the grant of this power carries with it the whole subject, leaving nothing for the State to act upon.

Recurring to the opinion by the Chief Justice in this case, we have an illustration of the recognition of the principle invoked in the legislation now proposed:

It has been said that the act of August 7, 1789, acknowledges a concurrent power in the States to regulate the conduct of pilots, and hence is inferred an admission of their concurrent right with Congress to regulate commerce with foreign nations and among the States. But this inference is not, we think, justified by the fact.

Although Congress can not enable a State to legislate, Congress may adopt the provisions of a State on any subject. When the Government was brought into existence, it found a system for the regulation of its pilots in force in every State. The act which has been mentioned adopts this system and gives it the same validity as if its provisions had been specially made by Congress. * * *

The acknowledged power of a State to regulate its police, its domestic trade, and to govern its own citizens, may enable it to legislate on the subject to a considerable extent; and the adoption of its system by Congress, and the application of it to the

whole subject of commerce, does not seem to the court to imply a right in the States to apply it of their own authority. But the adoption of the State system being temporary, being only until further legislative provision shall be made by Congress, shows conclusively an opinion that Congress could control the whole subject, and might adopt the system of the States, or provide one of its own.

There is a most striking illustration of the application of the principal sought to be applied in the proposed legislation. In the exercise of its implied powers under the Constitution Congress established the national-banking system and created a large number of national banks. Under certain well-defined limitations Congress subjected the said banks to the taxing power of the States. The legislatures of the States, by reason of that permission, did exercise that power over these agencies of the United States, a thing absolutely forbidden except for the permission so given. There has been no more prolific source of litigation in the Federal courts than this. The entire financial system of the country has been involved in it, and yet, in all the cases involving the question in the Supreme Court of the United States, there is not a decision denying the right of Congress to permit the States to exercise such power. If, then, such an act by Congress is constitutional, when its power is exercised by virtue of its implied powers, can the proposed legislation be unconstitutional in the exercise of its express powers under the Constitution?

Recurring again to practically the closing statement in that opinion, we have:

The court is aware that, in stating the train of reasoning by which we have been conducted to this result, much time has been consumed in an attempt to demonstrate propositions which may have been thought axioms. * * * But it was unavoidable. The conclusion to which we have come depends on a chain of principles which it was necessary to prove unbroken; and although some of them were thought nearly self-evident, the magnitude of the question, the weight and character belonging to those from whose judgment we dissent, and the argument at the bar demanded that we should assume nothing. Powerful and ingenious minds, taking as postulates that the powers expressly granted to the Government of the Union are to be contracted by construction into the narrowest possible compass, and that the original powers of the States are retained, if any possible construction will retain them, may by a course of well-digested but refined and metaphysical reasoning, founded on these premises, explain away the Constitution of our country, and leave it a magnificent structure, indeed, to look at, but totally unfit for use.

We have heard a great deal first and last of the original-package decision. But the very first original-package decision by the Supreme Court of the United States is the case of *Brown v. Maryland*, decided in the January term, 1827, and reported in 12th Wheaton, 419. In this case a tax was imposed by the State of Maryland, or intended to be imposed, upon goods which were imported. The Chief Justice said:

It is sufficient for the present to say, generally, that when the importer has so acted upon the thing imported that it has become incorporated and mixed up with the mass of property in the country, it has perhaps lost its distinctive character as an import and has become subject to the taxing power of the State. * * * The object of importation is sale.

And again, pages 446 and 447 of the report.

Mr. PARKER. Were these imports from foreign countries?

Mr. WILSON. These were from foreign countries, and the decision was given upon the power of Congress over imposts and the prohibition of the States to levy imposts. On the question to regulate commerce this is said:

What, then, is the just extent of a power to regulate commerce with foreign nations and among the several States?

This question was considered in the case of *Gibbons v. Ogden* (9 Wheat., 1), in which it was declared to be complete in itself and to acknowledge no limitations other than are prescribed by the Constitution. The power is coextensive with the subject on which it acts, and can not be stopped at the external boundary of a State, but must enter its interior. * * * Commerce is intercourse; one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic, when given in comprehensive terms, with the intent that its efficacy should be complete, should cease at the point when its continuance is indispensable to its value. To what purpose should the power to allow importation be given, unaccompanied with the power to authorize the sale of the thing imported.

Sale is the object of importation, and is an essential ingredient of that intercourse of which importation constitutes a part. It is as essential an ingredient, as indispensable to the entire thing, then, as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right not only to authorize importation, but to authorize the importer to sell. * * * We think, then, if the power to authorize a sale exists in Congress, the conclusion that the right to sell is connected with the law permitting importation, as an inseparable incident, is inevitable.

It will be remembered that in connection with these decisions upon the regulation of commerce numerous words are used which indicate very clearly the power to prohibit and to destroy. I shall not discuss that now. The *Bowman* case and the *Leisy v. Hardin* case and a large number of other cases contain, along with the word "regulate," words which clearly indicate the power to prohibit. The people had all the power that can be granted to a sovereignty. That sovereignty rests where? In the Congress of the United States to exercise, and it acknowledges no limitations in its exercise except those stated in the Constitution itself. There is no statement in the Constitution of the United States that Congress may not permit the States to control any traffic within their own borders if Congress desires to do so.

I wish to refer for just a moment or two to the *Rhodes* case (170 U. S.), which has been cited here, and to state that the court said—

If it had been the intention of the act of Congress to provide for the stoppage at the State line of every interstate-commerce contract relating to the merchandise named in the act, such purpose would have been easy of expression. * * * We think that, interpreting the statute by the light of all its provisions, it was not intended to, and did not cause, the power of the State to attach to an interstate commerce shipment whilst the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery there to the consignee.

Now, all the court decided in that case was that States did not have the right to do that thing on the absence of a declaration on the part of Congress, and it has been held in relation to other articles which are objects of interstate commerce that Congress has the right to permit the States to stop them as may be shown if it is necessary so to do. In the *Bowman* case the Supreme Court declared that the States could prohibit certain articles of merchandise from being brought into them, for Congress had authorized them to do so. In this we have both a legislative and judicial precedent for the proposed enactment. No case has any such act of Congress unconstitutional. It is only the attempted exercise of the power by the States which the people and the States have delegated to Congress which has been declared by the Supreme Court of the United States to be unconstitutional.

Now, in the case of *Vance v. Vandercook*, which is also relied upon to some extent, the court (170 U. S., p. 455) held that South Carolina could not exercise the power sought to be exercised because that power had been delegated to Congress.

So after all, Mr. Chairman and gentlemen of the committee, these decisions, and each and every one of them, go to the power of the States for the reason that as the matter now stands the authority is given by the people of the United States, through the Constitution of the United States, to Congress to regulate, and in the absence of the regulation or the exercise of power on the part of Congress there is not in the States any power to enact such laws as were then declared to be unconstitutional.

Mr. SMITH, of Kentucky. Do you claim that Congress can abdicate the power to regulate interstate commerce?

Mr. WILSON. No, sir; I do not think Congress can abdicate power. I do not believe that it would be an abdication of power.

The power is to regulate, which controls, and is all that any sovereign State would have in relation to it.

Any sovereign State may exercise that power in the exercise of its sovereignty in any way that it pleases, and the Congress of the United States can do that, subject only to the actual prohibitions that are placed upon it by the the Constitution of the United States, and there are no such conditions so far as this bill is concerned.

Mr. LITTLEFIELD. No such prohibition?

Mr. WILSON. No such prohibition.

There have been in many instances objections raised to the action taken by the Supreme Court in cases that were before them. These decisions are very largely political ones by the Supreme Court of the United States in that they affect the welfare of the General Government and of the nation. And I want to quote just a little from the opinion of Chief Justice Marshall in the case of *Craig v. Missouri* (4 Peters, 410, 437, 438). Senator Benton, who appeared on behalf of the State in that case, had advocated certain principles which the Chief Justice thought it was necessary for him to reply to, and he did it in his usual dignified way:

In the arguments we have been reminded by one side of the dignity of a sovereign State, of the humiliation of her submitting herself to this tribunal, of the dangers which may result from inflicting a wound on that dignity; by the other of the still superior dignity of the people of the United States, who have spoken their will in terms which we can not misunderstand.

To these admonitions we can only answer that if the exercise of that jurisdiction which has been imposed upon us by the Constitution and laws of the United States shall be calculated to bring on those dangers which have been indicated; or if it shall be indispensable to the preservation of the Union, and consequently of the independence and liberty of these United States, these are considerations which address themselves to those departments which may with perfect propriety be influenced by them.

This department can listen only to the mandates of law, and can tread only that path which is marked out by duty.

The controlling principle so often declared and never controverted indicates, practically with mathematical certainty, that if Congress in its discretion shall pass this bill the Supreme Court of the United States will uphold that discretion.

I shall be pleased to answer any questions that I can if the gentlemen desire to ask them.

Mr. BRANTLEY. Do you think that the States have now the same power over interstate commerce shipments or liquor that they will have if this bill becomes a law?

Mr. WILSON. Undoubtedly not. Otherwise there would be no necessity for passing it.

Mr. BRANTLEY. Then is not an increase of power from somewhere granted by this bill, and who grants it? Where does it come from?

Mr. WILSON. The sovereignty originally resided in the people of the whole Union as the nation existed at the time of the beginning of independence by the country.

Mr. SMITH, of Kentucky. You mean in the several sovereignties?

Mr. WILSON. If you will pardon me, I do not believe that I would be capable of undertaking to follow either of the schools which have followed up the construction of the Constitution of the United States, and I think that we can very safely rely for our purpose on the decisions of the Supreme Court of the United States. For some purposes the States were sovereign, but so far as they or the people delegated powers to another government they were not sovereign.

But the Supreme Court has said that both the people and the States made the Constitution of the United States, and that the power was delegated by them—by the people of the United States and of the States—and that Constitution declares that the Constitution and the treaties and the laws made in pursuance of the Constitution shall be the supreme law of the land, and that declaration is a declaration by the people and the States as well. I do not think I could follow the political argument as to the State rights question from the beginning.

I thank you very much for your courtesy.

WASHINGTON, D. C., *January 20, 1904.*

Wednesday, at 10.30 o'clock a. m.

The committee met, Hon. John J. Jenkins in the chair.

The CHAIRMAN. The committee will come to order.

Gentlemen of the committee, House bill 4072 is the special order for the morning. Mr. Dinwiddie, I believe, is present and has charge of the time on the part of those who are in favor of the bill. Mr. Dinwiddie, you have charge of the time, and we will look to you to regulate it on your side.

Mr. DINWIDDIE. How much time will we have this morning?

The CHAIRMAN. I can not speak for the committee; I suppose that you will have all the time that you require. There are people here from all parts of the country desiring to be heard.

Mr. CLAYTON. How much time do you want?

Mr. DINWIDDIE. It will not take us very long. The understanding was that we were to divide the time equally between those for and against the bill. I can get through very quickly, so far as I am concerned.

Mr. CLAYTON. How much time will you require?

Mr. DINWIDDIE. I suppose about an hour and a half, but I think that we can get through in forty-five minutes.

Mr. CLAYTON. The House meets to-day at 11.55 o'clock.

Mr. DE ARMOND. That is just an hour from now.

Mr. CLAYTON. I move that we take the time between now and the meeting of the House and divide it equally between the friends of this bill and those who are opposed to it.

Mr. PARKER. I hardly think that will give time for any body else to be heard, for the opponents; they should have more than that. You do not mean to limit them to that?

Mr. THOMAS. I suggest merely to divide the time, say, equally between the two sides before adjourning, and by that method it might be practicable to determine what time shall be given to the discussion or hearing on this bill. I think there ought to be some limit to it.

Mr. PARKER. That practically gives the advantage of an opening on both sides?

Mr. THOMAS. Yes.

Mr. PARKER. So that we can go on afterwards with a better understanding?

The CHAIRMAN. Is there anyone who desires to be heard in opposition to the bill?

Mr. SHERLEY. I do, but I desire to say that this morning I have to appear before the Committee on Rivers and Harbors. I represent a district which is more affected, perhaps, by this bill than any other in the country, and I should appreciate it very much if the committee would see fit to name some specific hour at which my people might be heard, and at which I might be heard.

Mr. GOEBEL. I represent the third district, Mr. Chairman, and I also desire to be heard some time.

Mr. THOMAS. We might continue this hearing from day to day until we can dispose of it.

Mr. BARTHOLDT. Will you permit me to say one word? I represent the St. Louis district, as you know, and there are a number of gentlemen from St. Louis who would like to be heard on this bill, and also the chairman of the German-American Alliance, which has 1,500,000 members and represents more than 3,000,000 votes, and while they have a number of representatives here there are many more who want to be heard. Nearly every State in the Union is now organizing for the purpose of asking a hearing before you or sending a delegation here for the purpose of being heard on this bill, and I therefore suggest that it would be impossible for you gentlemen to go on from day to day with the hearings, because those gentlemen could not possibly be here in time.

Mr. SOUTHARD. I have a large number of telegrams of constituents of mine, some of them indicating that they would like to be heard before this committee. No time was mentioned, but they said they supposed there would be plenty of opportunity after to-day, so that I would be pleased if they could have an opportunity at some subsequent date to appear before the committee.

The CHAIRMAN. Mr. Thomas, is your suggestion in the nature of an amendment to the motion of Mr. Clayton?

Mr. THOMAS. No; I supposed that the suggestion of Mr. Clayton was approved or adopted, that we proceed this forenoon with the hearing of both sides, dividing the time equally, and what I said was merely in the nature of a suggestion and not intended as a motion at all. Perhaps before adjourning we should come to some determination.

The CHAIRMAN. We will then have practically a half an hour this morning for each side. That is your idea?

Mr. THOMAS. That is the idea of the mover.

Mr. SOUTHARD. May I be pardoned for asking a question, Mr. Chairman. Is it the purpose of this committee to continue this hearing at a substantially later day or to continue from day to day?

The CHAIRMAN. The action of the committee this morning is for each side to be heard for half an hour this morning, and some time

during the day the committee will probably indicate what their pleasure will be.

Mr. SULZER. Mr. Chairman, I desire to say to the committee that a number of citizens of New York City desire to be heard in opposition to this bill, and I would like to have the committee, if they are going to have continuous hearings, or if the hearings are going to be concluded to-day—

The CHAIRMAN. Mr. Sulzer, the pleasure of the committee this morning is to hear both sides, each side for half an hour, and it is undecided what they will do after that time, but whatever is done we will endeavor to give you notice.

Mr. SULZER. I do not assume that the committee is going to conclude the hearings to-day. This is a very important bill, Mr. Chairman, and I know a number of persons very much interested, who can not be here to-day.

The CHAIRMAN. We will take your suggestion into consideration when the committee is determining what they will do.

Mr. SCUDDER. I represent another section of the State of New York, Mr. Chairman, and I should like to say that a number of constituents of mine have suggested to me that they would desire an opportunity to be heard in this matter.

Mr. CRAIN. I am counsel, Mr. Chairman, for the United States Brewers' Association, which represents the brewers of this country and is an opponent of this bill. I am only making this statement so that if you gentlemen in executive session see fit to take up this discussion you will understand that we ask, of course with a great deal of courtesy, that we shall be given time (not thirty minutes, nor an hour, but that we shall be given time) to express our views on the constitutionality of this bill, and that can not be done in thirty minutes or an hour. This bill is probably as far-reaching in its effects as any bill that has been presented to Congress since the civil war. I say that with entire confidence, and so when you gentlemen go into executive session I make that suggestion to you.

Mr. DINWIDDIE. Under these circumstances may I say simply this, that in order to facilitate these matters this morning, and in order that the rest of these gentlemen may have an opportunity to be heard, I will make my remarks very short, but will ask further to submit to the committee in writing what we do not get to submit before the committee in person. We could have a great many people here, of course, from every State in the Union who are favorable to the passage of the bill, and all that sort of thing, but it would take up the time of the committee, and I did not think that was the thing to do. If that is possible, Mr. Chairman, and with that understanding, I would like to just make an initial statement, and then introduce one or two persons this morning in favor of the bill.

The CHAIRMAN. There is no objection to you making any statement that you desire, or any other person that wants to do so.

STATEMENT OF REV. EDWIN C. DINWIDDIE, LEGISLATIVE SUPER-INTENDENT, AMERICAN ANTISALOON LEAGUE, BLISS BUILDING, WASHINGTON, D. C.

Mr. DINWIDDIE. I represent the Antisaloon League, Mr. Chairman and gentlemen of the committee, an organization which has auxiliaries

in about 39 States and Territories in the Union, and which is a federation of the various churches and temperance organizations of the country interested in temperance reform. I shall have occasion during the hearing this morning, if there is a continuance of the hearing, to introduce representatives of the constituent and affiliated bodies of our national organization, who will speak for their own organization in this connection.

We are here this morning in support of H. R. 4072, introduced by Mr. Hepburn, of Iowa, which is practically the same as H. R. 15331 of the last Congress, which was recommended by this committee and passed without division in the House on January 27 last.

It seems to me that the necessity for this legislation was so clearly set forth in the report of the House, submitted by Mr. Clayton of Alabama, that I cannot do better than refer to it in this opening statement. I shall not take the time of the committee to read it. It is report number 3377 of the Fifty-seventh Congress, second session.

In view of the fact that Congress is already on record as favoring remedial legislation by the passage of the so-called Wilson law of 1890—the full intention of which was defeated by the construction of a part of its language by the Supreme Court—there is no apparent necessity for a discussion of the wisdom of this policy on the part of Congress. In this connection I feel that it is only necessary to say that I think it is true beyond any controversy that the States never intended to surrender—nor, in my judgment did they actually surrender—their right to protect the health, property, morals, and lives of their people under their police powers, nor do I think that any attitude on the part of the National Government, whether it be by act of omission or commission, by which the effective exercise of these powers by the States will be rendered nugatory, will be acquiesced in by the people of the States.

As further evidence of the uniform policy of the Federal Government of recognizing the paramount rights of the States to regulate the liquor traffic in their own way—whether by license, local option, dispensary or prohibitory laws—I call attention to section 3243 of the internal revenue laws—edition of 1900—which reads as follows:

The payment of any tax imposed by the internal revenue laws for carrying on any trade or business shall not be held to exempt any person from any penalty or punishment provided by the laws of any State for carrying on the same within such State, or in any manner to authorize the commencement or continuance of such trade or business contrary to the laws of such States or in places prohibited by municipal law; nor shall the payment of any such tax be held to prohibit any State from placing a duty or tax on the same trade or business, for State or for other purposes.

This, taken in connection with the passage of the Wilson law of 1890, and the whole trend of the Federal attitude toward the liquor business, certainly settles the policy of the Federal Government in relation to the rights of the States in this matter.

The question of the constitutionality of the measure seemed, therefore, in the last Congress to be the only one worthy of serious consideration. I take it that the action of this committee, and, upon its recommendation, that of the House, evidenced the conviction on the part of both that the measure would be upheld by the Congress. However, it seems to me that any doubt which might have remained with reference to the constitutionality of this bill would be dissipated by a review of the Supreme Court decision in the Champion lottery

case, handed down on February 23, last, within less than a month of the passage of the Hepburn bill by the House.

In this opinion the court, speaking through Mr. Justice Harlan, called specific attention to the fact that the regulation of interstate commerce by Congress, expressly confided to it by the third paragraph of section 8 of article 1 of the Federal Constitution, to regulate commerce between the several States, carried with it the policy of power of prohibition, as illustrated in *Mugler v. Kansas* (123 U. S., 623); *Leisy v. Hardin* (135 U. S., 100); in the *Rahrer* case (140 U. S., 545), and in *Rhodes v. Iowa* (170 U. S., 412, 426), all of which have been referred to in the House committee report to which I adverted a few moments ago.

I shall not take the time now, Mr. Chairman, to read the opinion of the court bearing upon this specific case in the Champion lottery case, but I will incorporate it in what I shall submit to the committee later on in furtherance of the bill.

In this connection I want to introduce to you Mr. Andrew Wilson, the attorney of our District of Columbia League, and I want to give him ten or fifteen minutes, or such time as he may need, to discuss briefly the legal phase of the question.

Mr. HENRY. You stated that this bill practically changed the bill passed at the last session of Congress.

Mr. DINWIDDIE. Yes, sir.

Mr. HENRY. What is the difference between the two?

Mr. DINWIDDIE. I think the only difference, practically, is the proviso by which the interference by the State with what is called the transshipment of liquor is affected, by which it can not be interfered with. The fear was expressed by some people, although we did not think it could be done, that the State might interfere with the other States' shipments.

Mr. HENRY. Where is the proviso?

Mr. DINWIDDIE. It is the last clause of the last section—a proviso. It is designed to stop interference, and make sure there will be no interference, with trans-State shipments, so that a shipment can go from Illinois to Nebraska by the State of Iowa, and from one State to another State, without being interfered with.

Mr. HENRY. That is practically the only addition or change?

Mr. DINWIDDIE. Yes, sir.

**STATEMENT OF ANDREW WILSON, ESQ., ATTORNEY-AT-LAW,
WASHINGTON, D. C.**

Mr. WILSON. Mr. Chairman and gentlemen of the Committee: The bill before this Committee, as it seems to me, is clearly within the constitutional right of Congress to enact into law, if Congress, in its wisdom, desires that such a law should be enacted. The provision of the Constitution of the United States relating to the control of commerce is that Congress shall have power to regulate commerce with foreign nations, and among the several States. No limitations are placed in the Constitution, which is the charter of the Government of the United States, upon the power of the Congress as to this regulation, and any statements which are made or can be made relative to the constitutionality of any such proposed enactment will not find any support in any of the decisions of the Supreme Court, from the leading case of

Gibbons v. Ogden, in 9th Wheaton down, one in which the opinion was delivered by Chief Justice Marshall, in which the limitations and powers of Congress were discussed at length, and wherein the court defined also what "commerce" means.

And without referring to the large number of cases which have followed that, and all of which have recognized the authority of that decision, I now refer to the last decision, as I understand it, upon this question, which has been handed down by the Supreme Court of the United States—the lottery case, in volume 88 of the Reports of the Supreme Court of the United States, page 321—and I am going to read from page 346. This was on the question of the transmission of lottery tickets from a place in Texas to a place in California. In stating this case it is fair to say that the court was divided, five in favor of the constitutionality of the act of Congress prohibiting the transportation of lottery tickets, and four against its constitutionality; and it is well to note that every single justice of the Supreme Court of the United States was in thorough accord with the principle that in any case where an article of commerce, which is recognized as commerce under the law, is subject to be regulated or even prohibited if Congress desires to say so. Upon the point involved in this discussion here there is no diversity of opinion, and the nine justices are in thorough accord.

Referring to this case of *Gibbons v. Ogden*, the opinion of the court says:

The leading case under the commerce clause of the Constitution is *Gibbons v. Ogden* (9 Wheat., 1, 189, 194). Referring to that clause, Chief Justice Marshall said: "The subject to be regulated is commerce; and our Constitution being, as was aptly said at the bar, one of enumeration and not of definition, to ascertain the extent of the power it becomes necessary to settle the meaning of the word. The counsel for the appellee would limit it to traffic, to buying and selling, or the interchange of commodities, and do not admit that it comprehends navigation. This would restrict a general term, applicable to many objects, to one of its significations. Commerce, undoubtedly, is traffic, but it is something more; it is intercourse."

"It describes the commercial intercourse between nations and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. * * * It has been truly said, that commerce, as the word is used in the Constitution, is a unit, every part of which is indicated by the term. If this be the admitted meaning of the word, in its application to foreign nations, it must carry the same meaning throughout the sentence, and remain a unit, unless there be some plain intelligible cause which alters it. The subject to which the power is next applied is to commerce 'among the several States.' The word 'among' means intermingled with. A thing which is among others is intermingled with them. Commerce among the States can not stop at the external boundary line of each State, but may be introduced into the interior. It is not intended to say that these words comprehend that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States.

"Such a power would be inconvenient and is certainly unnecessary. Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one. * * * The genius and character of the whole Government seems to be that its action is to be applied to all the external concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the Government." * * *

"Again: 'We are now arrived at the inquiry, What is this power? It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. These are expressed in plain terms, and do not affect the questions which arise in this case, or which have been discussed at the bar. If, as has

always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.'

Mr. Justice Johnson, in the same case, expressed his entire approbation of the judgment rendered by the court, but delivered a separate opinion indicating the precise grounds upon which his conclusion rested. Referring to the grant of power over commerce, he said: "My opinion is founded on the application of the words of the grant to the subject of it. The 'power to regulate commerce,' here meant to be granted, was that power to regulate commerce which previously existed in the States. But what was that power? The States were, unquestionably, supreme; and each possessed that power over commerce which is acknowledged to reside in every sovereign State. * * * The law of nations, regarding man as a social animal, pronounces all commerce legitimate in a state of peace until prohibited by positive law. The power of a sovereign State over commerce therefore amounts to nothing more than a power to limit and restrain it at pleasure. And since the power to prescribe the limits to its freedom necessarily implies the power to determine what shall remain unrestrained, it follows that the power must be exclusive; it can reside but in one potentate; and, hence, the grant of this power carries with it the whole subject, leaving nothing for the State to act upon."

The principles announced in *Gibbons v. Ogden* were reaffirmed in *Brown v. Mary-land* (12 Wheat., 419, 446). After expressing doubt whether any of the evils proceeding from the feebleness of the Federal Government contributed more to the establishing of the present constitutional system than the deep and general conviction that commerce ought to be regulated by Congress, Chief Justice Marshall, speaking for the court, said:

"It is not, therefore, matter of surprise that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the States." Considering the question as to the just extent of the power to regulate commerce with foreign nations and among the several States, the court reaffirmed the doctrine that the power was "complete in itself, and to acknowledge no limitations other than are prescribed by the Constitution. * * * Commerce is intercourse; one of its most ordinary ingredients is traffic."

Then follows a discussion of the Passenger cases, and the cases of *Almy v. State of California*, *Woodruff v. Parham*, *Crandall v. Nevada*, *Henderson, etc., v. Mayor, etc.*, *United States v. Holliday*, and *Pensacola Tel. Co. v. Western Union Tel. Co.* In this last case it was decided that telegraph messages are subject to the regulation of commerce between the several States and on the power and authority of the Congress.

Then further on the opinion continues:

There is probably no governmental power that may not be exerted to the injury of the public. If what is done by Congress is manifestly in excess of the powers granted to it, then upon the courts will rest the duty of adjudging that its action is neither legal nor binding upon the people. But if what Congress does is within the limits of its power, and is simply unwise or injurious, the remedy is that suggested by Chief Justice Marshall in *Gibbons v. Ogden*, when he said: "The wisdom and discretion of Congress, their identity with the people, and the influence which their constituents possess at elections, are, in this, as in many other instances, as that, for example, of declaring war, the sole restraints on which they have relied to secure them from its abuse. They are the restraints on which the people must often rely solely in all representative governments."

But it is unnecessary to multiply cases, especially in view of the limited time I have, and it is probably unnecessary to say more than this, that there is not one case, from the very time that Chief Justice Marshall delivered the opinion in the case of *Gibbons v. Ogden* until this very hour, in which the Supreme Court of the United States has not upheld the very principle which is sought to be enacted here in this law, so far as the power of Congress is concerned. There is not any question but what liquor, in all of its forms, is an article of commerce or traffic, and Congress may deal with it as Congress deems

wise. The purpose, of course, of this legislation is to permit the States, as soon as the liquor crosses the line in the States, to have jurisdiction of this, and in the exercise of the police power which is reserved to the State, and which would be effective but for this commerce clause of the Constitution, so that the liquor may become amenable to the laws of the States upon crossing the line, if perchance it is to be transported to another State without being delivered—into other States. I believe my time has been exhausted, and I thank you very much.

The CHAIRMAN. Five minutes of the time remains.

Mr. DINWIDDIE. I will not take time this morning to present the reasons for this legislation. That can not be done now. I want to introduce Reverend Doctor Cannon, of Richmond, Va., president of our league there.

STATEMENT OF REV. JAMES CANNON, JR., EDITOR OF THE RICHMOND CHRISTIAN ADVOCATE, RICHMOND, VA.

Mr. CANNON. I represent before the committee that part of the country which is, I think, perhaps more opposed to the liquor traffic than any other section of our country to-day. The method by which we oppose the traffic is local option, very largely. We believe in managing this business by local authority. We give all of the power to the neighborhood life. That being so, you can see at once how we believe heartily in the principle of this bill, that the liquor traffic is a matter for police regulation, and that each neighborhood ought to be able to control these matters.

If that be so in a county or in a town, certainly it is true in the State, and if you take the whole bank of Southern States, the east Atlantic and Gulf States, you will find that the effectiveness of the legislation throughout the South has depended upon that principle of local legislation. We therefore believe that this legislation ought to pass, because no other section of the country should have the right to project itself into our neighborhood life, and if we do not want the traffic to go into our State we ought to have our right in the matter protected by the Government. All we ask is to be let alone in this matter, and we ask you to pass such a bill that we can have what we want.

STATEMENT OF MRS. MARGARET DYE ELLIS, LEGISLATIVE SUPERINTENDENT OF THE W. C. T. U., WASHINGTON, D. C.

Mrs. ELLIS. Mr. Chairman, and gentlemen of the committee, I represent an organization of Christian women of the United States. We have 300,000 members in our organization. We are organized in every State and Territory.

I am here to say just a word in behalf of the measure, which appeals very closely, as has been stated by the speaker who preceded me, in States which have already taken a voice in regard to the sale of intoxicants in their territory. Word has come to me from all parts of the country in the interest of this measure, from those in States where this local option or prohibition has been voted upon by communities.

I am sure, from the marvellous strides that are being taken, especially in the South, in the local option by counties, that to them this bill appeals.

There is Kentucky, with its 117 counties, two-thirds under local option; and Texas—a continent in itself—with its 250 counties, nearly two-thirds of that State under local option; and Mississippi forging ahead, and Tennessee rolling up county after county, until the entire State is permeated with the spirit of prohibition. And it is in behalf of these States that we appear to-day, where by the voice of the people the saloon has been driven out; where by the vote, by the highest gift bestowed upon a man, a citizen of this Republic who has deposited his ballot for the protection of his home, the saloon interest is outlawed, and then by action of certain men coming in and defying the vote the express wish of the people is defied, these men bringing their wares into this prohibition territory; and despite the wish expressed by the people they still carry on their nefarious business. So it seemed to us, as women, that it was time for the Government to speak through the National Congress and to say that this nefarious thing must cease.

A case came before me only yesterday. The president, of the State of Virginia, a Quaker, with her husband, standing on the station platform at Emporia, Va., noticed a pile of jugs there, and a wagon came and backed up and those jugs were loaded up and taken over and put in an empty car near by, and then the wagon came back and filled up again and again and took them over to this car, and upon making an inquiry of the station agent the man told her that these were jugs of whisky going to dry towns in North Carolina; that every day the shipment from Emporia was something like two wagon loads, and on the 23d of December last 600 jugs went down for the Christmas train into these local option towns. The distillers have moved out of North Carolina into Virginia, and this distiller, within only 12 miles of the State line, is carrying on his business, notwithstanding that the people have outlawed it in their midst; and that is why we come to you, and, as the representative of the home, for the greatest enemy to the home to-day is the legalized liquor traffic, and for the mother whose heart has been broken by this cause, and mothers' boys who have gone down, wrecks, I speak to this committee to-day, and I believe that this committee, whose work is so vital to the principles of our Government, will handle this question bravely and honestly.

MR. BARTHOLDT. Mr. Chairman and gentlemen of the committee, I should like to be heard at a future date instead of to-day, because some of these gentlemen have come from a great distance, and I should like to introduce first Mr. C. J. Hexamer, president of the German-American Alliance.

STATEMENT OF C. J. HEXAMER, PRESIDENT OF THE NATIONAL GERMAN-AMERICAN ALLIANCE.

THE CHAIRMAN. Will you please give your name to the stenographer.

MR. HEXAMER. C. J. Hexamer, civil engineer, 419 Walnut street, Philadelphia, Pa. Mr. Chairman and gentlemen of the committee, in behalf of the National German-American Alliance I beg leave to thank you for the courtesy you have extended to it by granting its representatives this hearing.

The following resolutions were passed by the national executive committee of the National German-American Alliance last November, and were indorsed by the executive council of each State branch in every State of the Union, representing 1,500,000 members:

Whereas, it has come to our knowledge that another effort will be made to pass an interstate liquor bill similar to the one known as the "Hepburn bill" introduced in the last Congress, with a minor change, (the substitution of "consigned" for "transported"), which does not, however, alter the spirit of the bill; and,

Whereas, such a law would be a severe check to the volition of sane people and an encroachment on the personal liberty guaranteed to every citizen of our land by the Constitution,

Be it resolved, That the National German-American Alliance most respectfully petitions the members of Congress not to vote for such a measure, and also to use their best endeavors to defeat any such bill.

Resolved, That a copy of these resolutions be transmitted to every member of Congress.

This was done on November 18, 1903. The following resolutions, copies of which are now being forwarded to the House of Representatives and to the Senate, were passed by our State branches and by over 6,000 associations and societies:

We respectfully petition your honorable body not to pass the measure now pending before you, and known as the Hepburn and Dolliver bills.

As German-American citizens of this country we hold ourselves second to none in our devotion to the cause of true temperance and to all that makes for the sanctity and purity of the home and decency and order in the State; but we are bitterly opposed to the passage of any law that destroys our rights of personal liberty, and for the protection of those rights we stand united as one body. As free and sovereign members of a free and sovereign people, we believe that we have the right to regulate our lives and our homes as we see fit. The right to drink our wine and our beer, and to import it into our homes, we consider as absolute an attribute of human liberty as is the right to buy any other food. The passage of the Hepburn and Dolliver bills will enable the State wherein we live to prevent us from bringing a glass of beer or a bottle of wine to our tables, and the divine right of each to pursue his own good in his own way will be sacrificed to the fears and the fanaticism of those who regard drink as a crime. We German-Americans have never allowed our love of food and drink to degenerate into intemperance or to interfere with the good of the community, and we regard these bills as an unrighteous invasion of our manhood rights and of human freedom, and as one of the most misleading and iniquitous measures ever introduced into Congress, and we pray for its defeat.

These resolutions, Mr. Chairman, represent the overwhelming sentiment of our population of German origin, roughly speaking about a tenth of our nation. In proof of this statement I beg leave to state that there are over 700 newspapers published in this country in the German language, and, as far as I am aware, these have without exception approved of these resolutions. The Hepburn bill, to which we German-Americans object, Mr. Chairman and gentlemen, is not a mere interstate commerce act, not mere legal technicalities are involved; but, Mr. Chairman, its passage would be a sad blow aimed at a fundamental principle of righteousness, sacred to every manly man. What is at stake, and let us not close our eyes to the fact, is the divine right of individual liberty, the right, as the great philosopher, Herbert Spencer, tersely put it, that "Every man is free to do that which he wills, provided he infringes not the equal freedom of any other man."

The strongest plea that can be put forward in favor of this iniquitous measure is that it would enable the governments of prohibition States to prevent persons from bringing a glass of beer to their tables, because a prevailing majority in such States desires—or better still, I will say pretends to desire—this end. Let us hope, Mr. Chairman

and gentlemen, that the spirit of liberty has not sunk so low in this our beloved Republic that national laws can be enacted to crush the individual of an intelligent majority in any State. The spirit of intolerance is one repugnant to the spirit of the age, and doubly so to every student of history and to every admirer of republican institutions. Especially should our national legislation be jealously guarded against the influence of the hysterical shrieks of fanaticism. In our national legislators we should have a stalwart bulwark against the erratic, impractical experiments that are sometimes tried by our State legislatures, laws that are enacted by State legislators goaded on by the pricks of fanaticism.

A majority in New England once drove out a Roger Williams, tortured the Quakers, and burned old women as witches. To my mind the Puritans, who bore false witness, showing, as it has been mildly put, "The blind obstinacy of certain persons who had staked their veracity and reputation on the assertion that there are witches and were determined to convict and execute them," were no lower in the moral scale than is the "professional prohibitionist" who makes assertions and even introduces into our public schools as "hygiene" statements that science and experience alike disprove.

If we look into the history of prohibition in the United States, we find what a failure it has been. As Mr. Kendal pointed out before the Senate Committee on Interstate Commerce on February 13, 1903:

It has been tried and rejected in 8 States, repudiated at the ballot box by overwhelming majorities in 13 States. Absolute prohibition is to-day (February 13, 1903) alleged to be in force only in three States, viz, Maine, Kansas, and North Dakota. It is still on the law books in Iowa and New Hampshire, but in the former State it is essentially modified by the mulct law, and in the latter the manufacture of intoxicants is permitted, and native wines and cider are exempt from the operation of the law. If ever the will of the people (as Mr. Kendal well told) has been expressed in an unmistakable manner on any question, it certainly was in regard to prohibition, a fallacy to which the efficacy of the interstate-commerce law is now to be sacrificed.

Since the hearing before the Senate committee last year Maine also, one of the three remaining prohibition States mentioned—the State that originated the prohibition movement—has repudiated this impractical measure. [Cries of "No, no," and "You mean New Hampshire."]

Let us frankly ask what has State prohibition legislation, in favor of which sane beings are now to be bereft of their volition by national legislation, accomplished? The answer has been clearly given by a commission of eminent, unbiased men, of national reputation. In their introduction to the results of an investigation of the liquor problem, Charles W. Eliot, Seth Low, and James C. Carter have over their signatures stated as follows:

There have been concomitant evils of prohibitory legislation. The efforts to enforce it during forty years past have had some unlooked for results on public respect for courts, judicial procedure, oaths, and law in general, and for officers of the law, legislators, and public servants. The public have seen law defied, a whole generation of habitual lawbreakers schooled in evasion and shamelessness, courts ineffective through fluctuations of policy, delays, perjuries, negligencies, and other miscarriages of justice, officers of the law double-faced and mercenary, legislators timid and insincere, candidates for office hypocritical and truckling, and officeholders unfaithful to pledges and to reasonable public expectation.

Indeed, the late Dr. Howard Crosby well expressed the sentiments of the great mass of the people of the United States, who, like ourselves, are striving for true temperance, when he said that "prohibition is the greatest enemy to a much needed reform." The practical

result of the passage of this bill would be to exclude in prohibition States a slightly alcoholic beverage and tonic which has done more to drive out ardent spirits and to further the cause of true temperance than all the prohibitionists of all times combined, namely, beer, and to substitute in its place strong liquors that can be put up in packages that will elude detection, which is impossible with beer.

In every crisis, in colonial times, as well as during our national existence, the German element in our land has stood for order and good common sense, and has always counseled well.

As early as 1688 our forefathers at Germantown passed the first of all protests against slavery. Their declaration of independence at Mecklenburg antedates that of Jefferson; they fed and clothed the army of Washington at Valley Forge; they gave the cause of liberty a De Kalb, a Steuben, a Herkimer, and a Muhlenberg. About 200,000 of them fought and bled over the country. They, regardless of party, stood as one man for national honor and honesty, voting for sound money. And, believe me, sir, we plead to-day from no ulterior motives. We are here because we honestly believe that the passage of this bill would be a grievous mistake, creating a precedent the final outcome of which can not now be foreseen. Because we feel that it would be an irreparable blow to individual liberty and the sacred institutions of our country, in favor of liberty we raise our voices.

Mr. Chairman, the branches from all parts of the United States are clamoring to be heard at some future time. The notice of this meeting was so short that we could not get people here from California or the Western States, and in my humble opinion I think it would be no more than fair to have these people heard here at some time, and I therefore most respectfully, in behalf of the National German-American Alliance, request that another meeting at some future date, at the end of February or better still the beginning of March, should be accorded us in order to give people ample time to be here and to prepare what can be said on the subject. What I have said is merely a scratch on the surface. I have done as well as I can in my humble way, but there are eminent men in all parts of the country who can bring the subject before you more fitly than I can with my humble powers, and I sincerely trust that a future hearing may be granted.

Might I say one word further. I want to say that it was a slip when I said that the State of Maine had repudiated prohibition. It should have been—

STATEMENT OF MR. GUSTAV VOSS, OF NEW YORK CITY.

The CHAIRMAN. You have ten minutes, Mr. Voss.

Mr. Voss. Mr. Chairman and gentlemen, I was only notified a few hours prior to this meeting of the fact that it was to be held, and in looking into the question I find that it is impossible for us at this time to give proper consideration to this vital bill now pending. It has been said by the previous speakers that this was a measure that affects our liberty, our rights, our personal freedom. It affects the Constitution of the United States; it affects the fundamental cornerstone of our nation, and I think for that reason we ought to have more time to prepare briefs and to place this matter at large before this committee. I can only speak at random now, but this measure is not a desirable one, as has been shown. It has been tried in many States, and those

States have gone against it. It has been tried in States where it has not been tried heretofore, and it has been experimented with.

I wish it also to be known by the friends of temperance that I am not altogether opposed to their point of view; but to prevent the sale, to prevent the barter of liquor in the States, as has been shown, has created more crimes than the open sale of it. Instead of its use being enlarged, people are obliged to conceal it, and when they have it in their homes debauch themselves. Instead of that, the States should have their police officers and let the people use it, but in the proper way; but they should not attempt to regulate its use in this manner. If you, in enacting this measure, curtail the power of one State to have intercourse with another State, we can not call ourselves a free people.

As was stated in one of the opinions rendered on the Wilson bill when that was passed, the judge said that it was practically taking us by the throat—that is, taking the Constitution by the throat; but, having a bull before us, we have to deal with him. Now, these measures go further than the Wilson bill. That simply says that each State may act for itself; but here it is said that you must not have any intercourse with another State. You except from the general rule this liquor question. But, gentlemen, by taking this measure and putting it on our statute books, where will we end? We can go to the very utmost, and simply make ourselves slaves.

As I said before, I am not prepared on the subject, and I would rather be permitted to speak at a future time.

STATEMENT OF MR. KARL A. M. SCHOLTZ, OF BALTIMORE, MD

The CHAIRMAN. Will you please give your name and address to the stenographer.

Mr. SCHOLTZ. Karl A. M. Scholtz; 108 East Saratoga street, Baltimore, Md.

Mr. Chairman and gentlemen, I appreciate the courtesy of being allowed to appear before your committee on this matter, but I am very much in the position of the previous speaker. I received a telegram late yesterday afternoon stating that this meeting would be held here to-day, and I have had very little opportunity of preparing myself for it, so that I will not take up very much of your time with anything that I may say.

This question appears to me, as it must necessarily appear to all of you, as an individual question. It is a question less for Congress than for the individual. It is an effort on the part of those people who desire prohibition to secure the aid of the national Congress to enforce prohibition. In my humble opinion Congress has little or nothing whatever to do with this particular prohibition law or the enforcement of prohibition.

Doctor Hexamer in his address told you that the Germans were an orderly, peace-loving people, good citizens, and good patriots. There is no use in my reiterating that, because history has proven that here wherever Germans have settled. I am a descendant of a German whose father fought in the civil war and whose brother took part in the last—in the Spanish war—and I believe myself to be as good a citizen as any man in this country, and yet I do not like to think of going down into Virginia, where I was born and raised, or go into

any other part of the country where momentarily the people are suffering under that policy of prohibition—and I say momentarily advisedly, because, as Doctor Hexamer says, this is one of those passing illusions which holds the fancy of the people only for a time.

The people who hold that opinion to-day are those who are descended lineally, largely, from those people who burned over a million people as witches because they truly believed that there was really such a thing as witchery, and that it was an offense in the sight of the Almighty and that it should be prevented in the interests of humanity; and I say that should I go back to Virginia—I am living now in Baltimore—as I hope to go back some day, and establish myself there—provided there is no prohibition law there—I might certainly, on occasion, like to offer to a guest at my table a good glass of wine or a stein or a glass of beer, as the case might be, and I cannot think that it would be right and just that the people of the particular county, or the fraction of a county, or the particular fractional fraction of that people, should have the right to say that I shall not have the right to entertain my guests as George Washington and Thomas Jefferson, and every man in the country before that, had the right to do—while they were burning witches.

I confess that is going back pretty far, but I do not know what else to compare it with. I have a respect for those people who are advocating this bill, Mr. Chairman. They are doing it conscientiously and honestly, I believe, but at the same time I do not believe their view is the right view to take in this question. As I say, I have not had much opportunity to study it, but I do not think that the constitutional question enters into this matter at all—not very much, at least—and this is simply an individual question. I am like Dr. Hexamer and other speakers who have addressed you this morning. There are members of the German-American Alliance in every State. There are members in Minnesota, and we expected a gentleman here from there to-day, and he telegraphed that he expected to be here without fail, but I have no doubt his train was delayed.

We had gentlemen summoned here from every part of the country we expected to be here, but the notice that we received of this meeting was too short to allow them to get here, so that I join in requesting—with all due respect and courtesy to this committee—that they do not hasten the hearings too much, but that they appoint a later day when there may be a more satisfactory and a fuller representation of the people of the United States, and a more adequate expression of the true sentiment of the people before the committee. I thank you, gentlemen.

The CHAIRMAN. It is 11.55 o'clock, and some of the members of the committee have insisted that they have a right to be on the floor this morning. What is the pleasure of the committee?

It was moved and seconded that the committee go into executive session, and thereupon, at 11.55 o'clock a. m., the committee went into executive session.

WEDNESDAY, *March 2, 1904.*

STATEMENT OF DR. WILBUR F. CRAFTS, SUPERINTENDENT OF THE INTERNATIONAL REFORM BUREAU, WASHINGTON, D. C.

Doctor CRAFTS. I am the superintendent of the International Reform Bureau, which is located in a building of its own, opposite the Library, at 206 Pennsylvania avenue SE.

The bureau which I represent is in touch with every city, village, and borough in the United States by its official organ, its documents, etc. I think I may say for the people who stand by this bill, some of whom have been heard and others will be heard, and those represented in petitions on record here, that 28,000,000 church members of this country—one-third of the voters, who have no personal interest involved—as seems to be the case of the men who are opposing this bill. I think the statements made, and the people that have come advocating the bill, represent substantially about 28,000,000 of Christians, at least a very large majority of them.

I want to say in the first place before speaking of the special points to which I will refer, that there is but a single issue, shall the United States Government continue to lend its interstate powers for the nullification of State liquor laws to outside dealers who sell liquors to "speak easies" in "original packages." In the last hearing it was said that the German-Americans were most of them against this bill, and that question I shall come to and is a question of some importance, since it has been raised, but the one issue and the only practical issue, is whether we shall continue to lend the power of the United States Congress, its interstate powers, to the nullification of State laws by the sale of liquors to "speak easies" by outside dealers.

We would remind the committee that only five States of this Union would be affected by this law. There are only five States that do not have some prohibition territory. Mr. Tillman has asked for this law in favor of the dispensary. We believe in making all kinds of liquor laws, whether dispensary or prohibitory or local option, solid and effective. I want to emphasize another fact, that this bill will not prevent anyone, as a matter of fact, from keeping liquors for his own private use. I think that the German-Americans, the minority, as I believe, who have arrayed themselves against this law, know that it will not interfere with any German's rights to import beer to his own house and I challenge anyone here to show that there is any fear based upon fact that in any State the private importation of beer or any other drinks will be interfered with.

Mr. GILLETT. Do you want to interfere with that right?

Doctor CRAFTS. That point was answered by Mr. Dinwiddie.

Mr. GILLETT. Why do you not consent to an amendment?

Doctor CRAFTS. That would be interfering with the State laws, and the States must have the power and the State laws must have full effect. If we were making a national prohibitory law we would accept the amendment.

Mr. GILLETT. You want to delegate the power of Congress?

Doctor CRAFTS. No, sir; it simply leaves the State free.

Mr. GILLETT. You want Congress to delegate its present power to the States?

Dr. CRAFTS. No, sir. Let me say this distinctly, that prohibition people even in dealing with prohibition towns deal with the question of buying and the subject of solicitation and inducements to buy.

Take the town of Brockton, my own town, a manufacturing town in Massachusetts. They have all classes of population and the majority of the men drink, but they do not want the rum shops to be open in the neighborhood of their homes and of their great factories; but they import in their homes. That does away with the open saloons and elevates the locality.

They speak of liberty, but liberty can be applied only properly under liberty of the law. There is no such thing as liberty for citizens to break the laws or liberty for officers to break their oaths to enforce them.

Mr. ALEXANDER. Speaking, for illustration, of Brockton, could Mr. Tirrell, if he lives in Brockton—I do not think he does—send out to Louisville and buy a gallon of whisky and have it brought into the town?

Dr. CRAFTS. Certainly; and so could any man.

This bill would not prevent any man in any place from buying beer or other intoxicants for his own private use from any licensed dealer, in the State or out of it, and the effect would be to give full effect to the liquor law of each State within its own borders, with or without local option, or a dispensary law, or a prohibitory law.

And there is no law anywhere to prevent a man from importing liquors for his own private use that he has bought where they could be legally sold. When this is understood I believe the opposition to this bill will dwindle by the withdrawal of thousands who have been misinformed and deceived by talk of liberty, for which the word anarchy should in this case be substituted.

I am reminded of the ancient discussions of the schoolma'am who debated long "How many angels can stand on the point of a needle?" In this case it is the practical question, How can anyone but an anarchist oppose the Hepburn bill? I do not wonder that representatives of the liquor dealers who come here to defend their "speak-easy" trade talk of everything but the real issue, and what desperate straits they must be in for pertinent arguments, who remind us, as if it were an argument against this bill, that Germans fought under the flag in the civil war, as if that were a reason why they should be arrayed against the flag now in the nullification of law for which the flag stands.

Equally wild is the desperate intimation that people will get liquors in defiance of state law if not allowed to get them by law, when this bill would not, in any way, prevent any man from getting liquors lawfully. The opponents of the bill seem anxious lest private citizens may be prevented from importing liquors into their own homes. They know that such importation is nowhere forbidden. It is the selling of liquors that is forbidden in no-license towns and States. Let them speak out and say it is their "speak-easy" trade that they are fighting for. Nothing else would the proposed legislation interfere with.

They remind me of the burglar whose movements in the cellar were interrupted by the cry of the owner of the house at the top of the stairs: "Who is there?" Silence. "Why do you not speak?" "Because I do not know what to say." These people who have burglarized prohibition States and towns dare not come out and defend

that in the open. This case represents those who have burglarized the State laws of Iowa and the States with local option. All the States but five have had their States burglarized by the distillers.

I have here expressions of opinion as to whether the German-Americans are against this bill. That was one of the important facts brought out at the last meeting. We did not hear the main issue, but we had speaker after speaker trying to get this committee impressed with the fact that the German-Americans are against this bill. We were told that the alliances which were against this bill represented more than a million people, and then the same speaker persisted that one-tenth of the population was German, representing something over 7,000,000 people, and that they were against this bill.

Granting, for the sake of argument, the truth of the statement of the speaker that the alliances represent over a million people opposed to this bill, how about the silent four-fifths of the German population that are not in the alliances? I have tried to find out the true sentiment of the German-Americans in the country, as to whether they are against a bill that is for the purpose of enabling the State to carry out its own laws. Here are some of the letters I have received. Twenty-nine States have spontaneously replied, and have poured in their letters, and have poured in their petitions by the thousand.

They have been sending their petitions to me and to their Congressmen. Twenty-nine States are represented in this list, and these have all come in in the last few days since the last hearing. I want to say that they come, many of them, from those churches that are largely of German stock. There are 60,000 German Methodists; there are a great many United Brethren, of German stock, a great many of the Evangelicals, a great many of the various Lutheran churches, and altogether a tremendous constituency of people of those Christian churches of Germans which, so far as I can find out, are a unit on this matter. And then there are a great many merchants who write on their own account on their letter heads and protest very intensely against the representation that the German-Americans are opposed to this bill. I wish to read several representative letters in the few moments that remain.

Here is a letter from a printer in Meriden, Conn.:

I also want to enter my protest against Doctor Hexamer's presumption that all German-Americans are opposed to the Hepburn-Dolliver bill by saying that I am a son of a man who came from Germany, and that I, with my father and three brothers, are most emphatically in favor of all measures that are for the preservation of law and the defeat of the nullifiers. I personally am a prohibitionist.

Here is another from Metropolis, Ill.:

It is not true, as claimed by the president of the National German-American Alliance, that German-Americans generally are against the Hepburn-Dolliver bill. We claim to be good and law-abiding American citizens, and we do not claim the leadership of the brewers, distillers, saloon keepers, and their allies at all, and are certainly not in favor that they send and sell or smuggle their liquor into prohibition States or counties.

Here is another, from Louisville, Ky.—a good place to come from. This is from one of the German pastors there:

As a law-abiding citizen and German of good standing, I protest against the growing interest in casting odium upon my race, and hereby petition your honorable body for an early and favorable report on the bill known as the Hepburn-Dolliver bill.

Yours, truly,

J. H. TUELL, D. D. S.

Here is another from Moores Hill, Ind.:

As this bill is to make law enforcement possible, the law-abiding Germans are in favor of it, and that is a host of them. Also a large number of the Germans are strong temperance people and object most emphatically to always being counted with the beer drinkers.

Sincerely, yours,

MONROE VAYHINGER.

Here is one from Winona, Minn.:

Practically all the members of the German Methodist, Baptist, Evangelical, United Brethren, and members of other German churches are in favor of the Hepburn-Dolliver bill. These Christian people, on account of not being directly financially interested in the matter, do not go before Congress and ask for the passage of that bill, but when it comes to voting they cast their ballots according to the dictates of their own consciences. Those Germans that go to the law-making bodies of our country and oppose temperance legislation are generally men interested in the liquor traffic, their hirelings, or those that are in some way financially benefited by that traffic. These people would like to give Congress the impression that they represent and are the spokesmen of the Germans in this country; but they are not. They simply work for the interest of their own business and only represent themselves and those immediately connected with that ruin-working traffic and not the better class of Germans which they pretend to represent.

Sincerely, yours,

A. H. MUEDEKING.

Here is one from the cashier of the *Aetna* Life Insurance Company in Peoria, Ill.:

The German branch of the Methodist Episcopal Church, with which I am connected, has a membership in full connection in the United States of 60,000 or over, and is a body of American citizens of German descent, whose opinions on this subject are voiced by the well-known expressions of various general conferences of the Methodist Episcopal Church on the subject of the liquor traffic, and I have personal knowledge of other German church bodies in the United States that agree with the Methodists on this point, hence it is not a fact by any means that German-Americans generally are on the side of the brewers on this question.

Very respectfully, yours,

A. W. KOCH.

Here is another from Preston, Minn.:

It is simply not true that the majority of the German-Americans are opposed to the passage of the Hepburn-Dolliver bill.

Very respectfully,

A. GEYMAN,
Pastor Evangelical Church.

Here is another from South Manchester, Conn.:

I desire to say that in my opinion the German-American voters of this nation are a law-abiding people and desire to obey the laws of this nation, and that they are not in sympathy with any underhanded, law-defying methods of overcoming the statutes of the nation or Commonwealth.

Yours, sincerely,

EMIL L. G. HOENTHAL.

Here is another from Wadena, Minn.:

I protest against the nullification of State liquor laws and no-license ordinances by so-called "original packages" and other "interstate commerce" tricks.

Fraternally, yours,

Rev. G. G. SCHMID.

Here is one from Bethany, Oreg., from the pastor of the German Presbyterian Church there:

I notice that quite a stir is being made by the National German-American Association, which seems to make the impression that it speaks as the mouthpiece of the ten millions of German-Americans. I know from personal contact with that society and its membership that it does not represent the Christian German-American element at all, but counts as its chief constituents those personally interested in the liquor business.

Let us not be bulldozed by them.

Yours, faithfully,

W.M. C. LANBE.

Here is a large batch of letters written in German, which I will not read, although I presume many of you would catch the language.

I will not trouble you to read any more of these letters. Here are several hundred letters that have come to me, and a great many have come to the Anti-Saloon League and the Senators and Congressmen; here are a great many petitions representing churches and synods, representing tens and thousands besides those in the record.

It seems to me that the claim made so often that the German-Americans are on the side in favor of nullifying law, or in favor of overriding the State or local laws, is a matter that has gone too long uncontradicted. I remember in Brooklyn hundreds of thousands of Germans gathered and protested against this expression of opinion being their opinion—these quiet ones that do not go much into politics, but nevertheless the plain people that Mr. Lincoln told us to look out for.

Again, in Cincinnati a thousand or more gathered in a public meeting and protested against this misrepresentation.

So, it seems to me that we do not only represent the Protestant and Catholic churches for that matter, in petitioning for this law, but the law-abiding element of the foreign population quite as much; and I am quite sure that before this controversy is over there will be no doubt in any mind where the majority of the German-Americans stand in this matter.

I want to mention now, in the moments that remain, an instance or two of how this law is violated, for this has not been brought up. Mr. Dinwiddie will bring in more instances, I have no doubt.

I know a local-option town where the express companies are turned into liquor stores. All along the shelves of the express company are to be seen bottles, bottles! If a man has a thirst and once orders a bottle through the express company that bottle is then kept there and as soon as he has used up the contents, if he is seized with another thirst they will bring him another bottle of liquor—and without waiting for him to order it—because they are pretty sure that he will be seized with another thirst.

Mr. CLAYTON. To what town do you refer?

Doctor CRAFTS. Washington, Pa. I have been there and looked the matter up. Then, in many cases, the consignment of these liquors is made to John Doe or Richard Roe, a little package with a single bottle in it sent to John Doe or Richard Roe, and then the bill of lading is transferred to whoever wants the bottle. It is simply a device for peddling the liquor from door to door and through the streets. And then, again, the liquor is sometimes consigned to a person by some name and it is said that he has not called for it, and when another man comes in and wants to get a bottle of liquor they will give him this bottle, which they say was sent to somebody who never called for it.

And so by a multitude of devices the law is broken down because of this possibility of getting it to the consignee before the effect of the State law is felt. And so it seems to me that for the protection of the nation against the slander of going in and breaking the laws, breaking down the laws of these States, we certainly need to have legislation like this. The nation certainly must not make it harder for the States to enforce their police regulations. The Supreme Court has said that two things are supreme, public health and the public morals; and certainly the Congress of the United States should stand

at least to hold its hands off when States are trying to promote those two supreme things, the public health and the public morals, which is the end and object of all this legislation.

(Thereupon, at 12.30, the committee took a recess until 2.30 o'clock p. m.)

After recess.

The committee reassembled at 2.30 o'clock p. m., pursuant to the taking of recess, Hon. John J. Jenkins in the chair.

Mr. BARTHOLDT. Mr. Sullivan, whom you all know, will address you first this afternoon.

STATEMENT OF HON. JOHN A. SULLIVAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS.

Mr. SULLIVAN. Mr. Chairman and gentlemen of the committee, I wish to say in the beginning that I represent in this matter neither clients nor constituents, but that I represent only myself; and yet I believe that the sentiments I shall give voice to this afternoon are shared by a very large majority of the right living and high thinking people of Boston, Mass.

As to representation numerically, inasmuch as one gentleman on the other side admits that he represents only 28,000,000, I presume that I represent the other 52,000,000 people in the United States, who are classed by the advocates of this bill as anarchists. I have received no instructions from anyone in my district. There are no distilleries in the district. There are some breweries, but I have not been instructed by them, and, so far as I can learn, none of these breweries are engaged to any considerable extent in interstate commerce, as I believe most of their product is sold within the State of Massachusetts. Therefore they would not be affected to any great extent by the provisions of this act if it should become a law.

Mr. LITTLEFIELD. So that the argument of inconvenience would not disturb your constituents much?

Mr. SULLIVAN. No. I take it that the object of these petitioners, the cause that brought them here, was their desire to prevent the sale of intoxicating liquors in the several States, and thereby the violation of State statutes. I believe it is the illegal sale they desire to prevent, for I believe the committee will agree with me—and I do not understand that the petitioners claim to the contrary—that if the laws of their several States could be enforced as to the sale of intoxicating liquors, there would be no very formidable demand for the prohibition of the importation of intoxicating liquors intended for consumption by those who import them. Therefore the demand arises because State laws are being violated as to sales of liquors within the confines of those States, and those States desire help from the Federal Government in the enforcement of those laws.

I believe, however, although these petitioners have disclaimed any intention to prevent the importation of liquor intended for consumption, that if this law would pass they would not rest content, but would regard it as one victory which would be simply a stepping stone to others to be secured later; that in Iowa, where, as I am informed, there is a law prohibiting the importation of liquor, under this law, therefore, no liquor could be imported, even for consumption, in the State of Iowa; that an agitation would be begun by these people, who

believe, and believe honestly, that they represent the conscience and the morals of the country, to secure the same kind of prohibition in their several States, namely, prohibition of the importation of intoxicating liquors intended for consumption.

Mr. LITTLEFIELD. Do you understand that they now have a statute in Iowa prohibiting importation?

Mr. SULLIVAN. That is my belief; I am so informed.

Mr. LITTLEFIELD. I did not know about it.

Mr. SULLIVAN. I am so informed, but I have not investigated it.

Mr. THOMAS. There is a statute of that kind prohibiting the importation of liquors except where there is a certificate from the proper authority.

Mr. SULLIVAN. And that is the real purpose of these petitioners as shown by the answer of their counsel, I think, who, when asked by a member of the committee if he would object to having the words "use and consumption" stricken out in the fifth line of the bill, stated that he would object; that although it was not their intention to prevent importation for consumption, that he would be unwilling to have those words stricken out of the bill, although the bill so amended would accomplish the intent which he says he seeks to have accomplished.

It would be a very simple matter for this committee to strike out "use and consumption" in line 5, and accomplish all that these petitioners say that they desire to have accomplished, and that would be an advance on the State law in the several States where this movement is formidable, because then, under the terms of this bill, liquor coming from another State to be delivered for sale within the borders of a prohibition State could be seized before it arrived in the hands of the consignee—that is, it could be seized immediately after it crossed the State line.

Now, if this bill is passed, may I not put this question to the committee, and reasonably? Is it not passed because in the opinion of the majority of the people in the several States—I am referring to the States having prohibitory laws—it is a desirable thing to suppress as far as possible the drinking of intoxicating liquors in order to promote the moral growth of the community; such a law is passed in the exercise of the police power for the purpose of securing the health and the morality of the community? Could you prevent a State from passing a similar law against the sale of tea or coffee? Tea contains a poison known as thein, and coffee contains a poison known as caffein. In such an exercise of the police power does any gentleman of the committee contend that any court would say that that exercise was not a valid one?

I believe no gentleman would go that far. And therefore it is not unlikely that those who do not believe in the use of tea and coffee will come before Congress and ask that the words "tea and coffee" be read into this law alongside of "all fermented, distilled, or other intoxicating liquors"; and according as any great number of a community believe that a certain article of food or drink is deleterious, then those people will come before Congress and ask Federal assistance to have those things prohibited from being sold within the several States.

I do not think Congress ought to go that far. If you begin you make a precedent, and it may lead to that. Perhaps that is somewhat fanciful, but it indicates what may be done.

Mr. LITTLEFIELD. Would you have any objection to indicating to the committee what your conception is of the extent of the police

power—to what subjects it applies? I suppose as lawyers we concede that there are limits to it.

Mr. SULLIVAN. I think we concede, as lawyers, that there are limits to it, but I have never found any lawyers who subsequently became judges who dared to enumerate the subjects upon which police power could be exercised. They say, in a general way, those things that promote the safety or health or morals of the community. I have never known any court, Federal or State, which gave an enumeration of the subjects upon which the police power could be exercised. And I think in the last analysis, Mr. Littlefield, it depends upon the beliefs of the people in a given locality, and may vary in the different States. So it would be impossible to give any set definition.

Mr. LITTLEFIELD. If it involves in the last analysis the suggestion you make, that would eliminate any legal principle?

Mr. SULLIVAN. I think that is true. I think that is a practical difficulty to be met in the application of that law in the courts of each State.

Mr. BARTHOLDT. Mr. Sullivan will allow a suggestion right in connection with the question asked by the gentleman from Maine?

Mr. SULLIVAN. Certainly.

Mr. BARTHOLDT. I believe medical authorities agree that the excessive use of coffee and tea is just as injurious to health as the excessive use of intoxicants, and if that is true the principle which is invoked here may be applied to coffee and tea the same as it is applied to alcoholic beverages.

Mr. SULLIVAN. And people agree that dyspepsia is a bad disease, induced sometimes not by the use of coffee or tea or intoxicants. I think, following out that suggestion, that I would be almost ready to legislate against dyspepsia, if I could, because I suffer from it. Personally I do not use tobacco, and liquor very sparingly. The Postum people have made millions because they have convinced a great many people that coffee is an injurious thing.

Mr. LITTLEFIELD. You and I do not take it, I believe.

Mr. SULLIVAN. I take my coffee straight. Now, let me ask what is the cause, what is the demand for this legislation in the last analysis? Is it not the inability of the people in the several States to enforce their own laws? I believe that no reasonable man who is contending for this law would say that he could come here and muster this force of witnesses if the importation of liquor could be confined absolutely to importation for private use. Therefore the desire for it grows out of the failure of the State to prevent the sale of it against the provisions of the State statutes. Now, what is the reason for the failure of the States to enforce these laws? I take it they must be two, and two only. First, that the people in these States have elected men who are either inefficient or corrupt, and who therefore can not or will not enforce those laws; or else there is an inherent defect in the laws themselves. What can be the inherent defect that makes every prohibitory law a failure? I believe even in Maine there is a failure in the administration of the law—

Mr. LITTLEFIELD. That is a question of opinion.

Mr. THOMAS. In what way will this proposed law aid the States in enforcing laws regulating the liquor traffic?

Mr. SULLIVAN. In this way: that unless this law is passed, in States which prohibit the importation of liquor intended for sale, but which permit the importation for consumption, that liquor may be consigned

to persons ostensibly for consumption, but in reality for resale, and may be sold again by a person who asserts that it was bought by him for his private use; now, then, if you cut off the right of the illegal seller in the State to purchase it for his own consumption, it follows that he can not get it at all, and therefore can not sell it; and if you admit his right to import it for consumption he may apply it to some other purpose.

Mr. THOMAS. Then it is your contention that this bill ought not to be passed, because, as the law now is, liquors may be shipped into the State, and they may be diverted from legal purposes, or it affords an opportunity for the evasion of State law. That, I believe, is your position?

Mr. SULLIVAN. I do not believe I would like to have the gentleman define my position for me, after listening to his statement. I object to it, for the reasons I have already stated and others which I will state. I was asking what is the inherent defect in all prohibitory laws.

I believe the root of it is in the fact that it attempts to prescribe a diet for the individual; it attempts to say to him what he shall drink and what he shall not drink. In other words, certain gentlemen believe that they are their brothers' keepers, and they propose to keep their brothers according to their own ideas. They are intolerant of the desires and wishes of other men in the community whose desires and wishes are different from their own. That is to say, I, in a particular State, who like coffee and who do not like liquor, would like to say to my friend who does not like coffee, but does like liquor, "You shall not have any liquor, because I don't like it, and because I think it is bad for you and for the community." That is their position exactly.

Now, I believe that there is not in any State of this Union a majority, if the question could be ascertained accurately, who would vote for a law that would prevent the consumption of liquors. That is to say, you could not find a majority in any State who would be willing to vote away their right to drink intoxicating liquors in reasonable quantities, and it is because you can not find a majority in any State possessed of ideas of that kind that these laws fail when they are attempted to be enforced. In other words, the sentiment of the community is lacking which is necessary to enforce the real underlying purpose of these prohibitory laws, and that is why they fail.

Mr. THOMAS. Then you think that the laws of the several States upon this question do not reflect the sentiment of the majority of the people?

Mr. SULLIVAN. I do not think—

Mr. LITTLEFIELD. No, that is not his proposition.

Mr. SULLIVAN. I do not say that. The gentleman has put his question with a great deal of skill. I do not assert that, quite. I say this: That I believe those prohibitory laws were put upon the statute books with the assent of a great many men who believe in the use of liquor to a reasonable extent themselves, but who believe they have the power to control their own appetites and are willing to legislate for those persons in the community who have not the same power of control. They believe further, and know further, that when they have prohibited by law the manufacture and sale of liquor within the borders of the State, that they can get what they desire from other States, in a lawful man-

ner, and satisfy their own reasonable appetites. I believe that is the reason for these prohibitory laws.

But if you could get a proposed law submitted to the people of any State which would deny absolutely to all persons the right to obtain liquor for their own use, whether manufactured in the State or out of the State, I do not believe you would get a majority of the citizens of any State to vote for that law. Now, then, I believe in effect that these people in the several States are asking the aid of the Federal Government to enforce these laws. I think that is what it comes to in the last analysis. Let me ask if we have the right to do that?

Mr. LITTLEFIELD. How would this aid them?

Mr. SULLIVAN. In the way I have indicated, Mr. Littlefield; that by permitting the State authorities to seize liquor intended for consumption imported from another State, that then there would be no source from which liquor could come.

Mr. LITTLEFIELD. But do they have such legislation now?

Mr. SULLIVAN. I believe they have it in one State, Iowa, and I think I said that I believe it will be the attempt on the part of these selfsame petitioners to extend that state of things.

Mr. LITTLEFIELD. But, if I get your theory right, you also say you do not believe there is any community which would pass such laws.

Mr. SULLIVAN. I believe they will fail.

Mr. LITTLEFIELD. Then that is an imaginary difficulty, if it is a difficulty from your point of view; it is a contingency which will never arise.

Mr. SULLIVAN. But if you have this law upon the statute books, then they may agitate constantly toward that end, and if by any chance my opinion should be wrong, as it may easily be, and some States should have a majority for such a law, then that evil which I have spoken of would occur.

Mr. LITTLEFIELD. But it is not a very immediate contingency, from your point of view?

Mr. SULLIVAN. No, that particular aspect is not.

Mr. BARTHOLDT. All prohibitory laws passed so far read thusly: "The sale and manufacture of intoxicating drinks is hereby prohibited." None of them, so far as I know, say that the sale, manufacture, and drinking of intoxicating liquors is prohibited.

The CHAIRMAN. The committee has decided that we can not have interruptions, and unless the committee overrules me I will have to carry out the order of the committee.

Mr. BARTHOLDT. Pardon me, Mr. Chairman.

Mr. SULLIVAN. Personally I have no objection to being interrupted.

Mr. BARTHOLDT. The gentlemen did not object, but I beg the chairman's pardon.

Mr. SULLIVAN. To reply specifically to the state of things which Mr. Littlefield has called attention to here is the way in which the petitioners, in their desire to have the laws enforced, could be aided by the passage of this law. At the present time under our laws where the sale of liquor is prohibited in a State that liquor may not be seized before it is put in the hands of the consignee, and if that consignee (I am speaking now of most of the States) intended that for his own personal use it would then be safe in his own hands from any civil authority. Now, however, if liquor should come into a State from

another State it might be seized immediately by the State authorities under the provisions of this bill—

Mr. LITTLEFIELD. That is, if they had the proper legislation, you mean?

Mr. SULLIVAN. Yes; and if it could be proved that that liquor was intended for resale, then the person to whom the liquor was consigned could be prosecuted and convicted of a violation of the State law. Now, I believe that there are only three legitimate grounds upon which Federal authority may be invoked to help States to enforce their laws, and those are where the preservation of a republican form of government is threatened in a State, or where there is great domestic violence, or an actual or threatened invasion of a State by hostile forces. In those cases the Federal Government may assert its power. But I contend it has not the right, under the guise of an act to regulate interstate commerce, to help a particular State to enforce its own domestic laws.

Now, the practical question here arises again, whether Congress should abdicate its power to regulate interstate commerce, and perhaps some gentleman in his own mind may think that it is not a surrender on the part of Congress of the power to regulate interstate commerce. Now, what will the result be? The result will be that you may have out of the 45 States a great many laws which conflict, because the statutes may not progress evenly in all the States. You will find that some of the States, by bringing other statutes up to the point of this Federal act, will have regulated for all substantial purposes, interstate commerce, one class of it, that class which has for its subject intoxicating liquor, and other States will not have made such regulations. Then I ask you what becomes of the intention of the framers of the Constitution to have uniformity in the laws relating to the great subject of commerce? Was it not to procure uniformity of legislation that this provision of the Constitution was made; was not that one of the moving causes?

Mr. LITTLEFIELD. You mean uniform State legislation?

Mr. SULLIVAN. Uniformity in national legislation.

Mr. LITTLEFIELD. You mean a uniform rule.

Mr. SULLIVAN. A uniform rule, exactly. It was to prescribe uniform rules for the government of commerce that the Constitution itself was adopted more than any other cause, I believe. But in this you may have rules that are not uniform because you have substantially delegated to the several States the power to regulate interstate commerce upon one class of the subjects of commerce. I think you do more than that, too; I think you interfere with the personal liberty of the citizens. I know that some of the petitioners will smile, as they always do, at the mention of the words "personal liberty," and their definition of personal liberty is license to do evil. I can not agree with them in that definition.

Mr. LITTLEFIELD. That is, we would allow the State to interfere with personal liberty?

Mr. SULLIVAN. I think you do, yes, sir; and the discussion between Mr. Shirley and Mr. Littlefield this morning, I think, brings that out. How do you interfere? I claim, first, you interfere with the right of free contracts between two citizens, and I know some will say that freedom of contract has been frequently interfered with. But there ought to be limits where that freedom of contract would not be inter-

ferred with. You prevent, for instance, a citizen of Pennsylvania making a sale of intoxicating liquor to a citizen in Iowa. You prevent a citizen of Iowa making a purchase of intoxicating liquor from a citizen of Pennsylvania, which liquor may be intended for his own personal use.

Thus you interfere with the rights of two citizens who have that power to contract, or should have it so long as it does not interfere with the peace and morals of the State. The latter consideration would apply to the citizens in Iowa, under Iowa laws, but I take it it does not apply to the citizens of Pennsylvania. When you say that an article purchased in Pennsylvania shall not be delivered in the State of Iowa you defeat the purpose of the contract, which is a sale. The sale can not be completed, practically, although it may be legally, without a delivery.

Mr. LITTLEFIELD. He would not receive his material although in law it might have been delivered to him?

Mr. SULLIVAN. Yes.

Mr. LITTLEFIELD. The purpose sought to be discharged by the transaction is defeated?

Mr. SULLIVAN. Yes.

Mr. LITTLEFIELD. And equally so if he can not sell it in the original package, as a rule?

Mr. SULLIVAN. As a rule, yes, sir. I want to say, that so far as my individual views are concerned, that I have not any complaint to make against that provision of the law which defeats the power of a consignee in a prohibitory State to make a resale of an original package of imported liquor in violation of law. I do not care anything about that.

The thing that I object to personally is the invasion of the personal liberty of a citizen to eat and drink and wear what he pleases, so long as he does not flagrantly outrage the sensibilities and the morals of people who live in the same community with him, and I take it that that right of personal liberty existed before this Government or any other government was constituted, and that there are certain rights of personal liberty which no government can take away from the citizen by law. And it is because courts are reluctant to say that the exercise of the police power by a State is violated in a given instance that this personal liberty of a citizen is in danger in reality, and we are endangering it further by passing this kind of a law.

I thank the gentlemen for their attention.

Mr. BARTHOLDT. Mr. Chairman, I want to take the time of the committee for one minute or two, in order to say regularly what I tried to say irregularly. The point I tried to make while Mr. Sullivan was speaking was this: All prohibition laws now on the statute books in this country prohibit the sale or manufacture of intoxicating liquors; they do not say that the sale, manufacture, and consumption of intoxicating liquors are prohibited. If they attempted to do that also—if any State legislature would endeavor to pass a law of that kind—I am sure a majority of that legislature and a majority of the people of every prohibition State and every other State in this country would vote down such a prohibition.

Mr. LITTLEFIELD. In your judgment that is a contingency so remote that it is hardly worth while taking into account in connection with this legislation?

Mr. BARTHOLDT. I refer to it merely to show that here is an attempt made to circumvent and practically to achieve the same purpose that you can not achieve by the vote of the people.

Mr. CLAYTON. But you say that is not likely to happen?

Mr. LITTLEFIELD. You say there is no probability whatever of that occurring. Now, the fact that this legislation may open up the opportunity, if there is nothing behind the opportunity it is beyond all conception; it may as well be eliminated, that is, from your point of view?

Mr. BARTHOLDT. I can say in answer to Mr. Littlefield that if prohibition is a good thing, if you thoroughly believe in the principle of prohibition, why don't you get your State legislature to prohibit the drinking of intoxicating liquors?

Mr. LITTLEFIELD. I will not take the time to discuss the ethics of the question, although I have fairly well-defined views on the subject. I do not think the ethics are really involved in this question.

Mr. DINWIDDIE. I would be glad to introduce Mrs. J. Ellen Foster.

STATEMENT OF MRS. J. ELLEN FOSTER, LEGISLATIVE SECRETARY OF THE NATIONAL NONPARTISAN WOMAN'S CHRISTIAN TEMPERANCE UNION.

Mrs. FOSTER. Mr. Chairman and gentlemen of the committee, I could not begin to say how many people I represent, nor how many people I do not represent. The society for whom I speak does not contain within its ranks a majority of the temperance women of the country. This large majority you have heard from through Mrs. Ellis, who represents the old W. C. T. U. I represent a smaller body of W. C. T. U., whose only material difference from the other body is that they have in their cardinal doctrine that they will not ally the temperance movement with any political party. Essentially, as far as the purposes of this argument are concerned, we are one in our purpose—we would all of us like to destroy the liquor traffic root and branch.

We would consider ourselves very happy if we could pass around this honorable body, including everybody under this roof, the temperance pledge; but we should consider that we would at once be called to order by the chairman of the committee, who would say that is not the business of this committee. So in order that I may clearly state what is my business here, I want to say that I represent women who have no other interest in the pending question than interests which no man or woman under this roof will dispute. There can be no criticism of the interests for which we stand pledged to God. These are the interests of morals—the interests of good, quiet home living.

Whatever anybody thinks of woman's position anywhere else, she is accredited to have a right to speak for the home. And if the liquor traffic exists in this country in any way, shape, or manner, it exists because the men of our households—and I am sorry to say some of the women of our households—patronize the traffic. So you see the thing we are after is just as far as possible to circumscribe the operation of the traffic which does us so much harm. That is the straight, single proposition.

But I am also aware that we can not present that proposition to this committee in its wide area, because it is beyond the scope of this

committee to act except in a very limited area. What is that area? What is the province of this committee? What may I with good face say to you to-day?

The first thing I may not say is to argue the question of personal rights and personal liberty. With that this committee has nothing whatsoever to do. I might just as well pass around this table with my temperance pledge—which I would be delighted to do when convenient opportunity to do it occurs. It would be as improper for me to do that as it is for any man to stand here and argue pro and con the question of prohibition. It is not the question before this committee. Prohibition—the regulation of the liquor traffic—is a matter which belongs to the States and to the police power of the States. We do argue that question, we talk for prohibition, we talk for local option, we talk for those things, we talk for anything we think will help us before our States. We go to the forum where that question has a right to go.

Therefore, although I am intranced by the arguments which have been made here and to which you have most decorously listened, and although I am tempted to enter into a discussion of that question, my own common sense tells me I must not; because you can not—although, gentlemen, you are great lawyers at home and you are honored by places on this committee—yet, excuse my impudence, if you call it so, you have nothing to do with the police power of Iowa or Maine or the great rich State of Missouri, from which my honorable friend comes. If they choose to prohibit, they will prohibit. If they choose to go to the extent of the prohibition of tea and coffee, they may go that far, and this committee can not say them nay. It is wholly a matter within their discretion. There is not a lawyer at this table, or in this room, that will dispute this proposition. Therefore, prohibition is not before this body at all.

Also I am surprised that the question is narrowed to so fine a point. I thank the gentlemen on the other side of this question who have so narrowed it down. They even say they do not object to the law which prohibits the sale of imported liquors. Am I not correct? I think the proposition has been stated here. Good sense they have, because the courts have passed upon that doctrine, and the lawyers on this committee, whatever they may think about it, would not encourage any of their friends outside of the committee to stand here as lawyers and argue against the proposition which the Supreme Court has sustained.

Then the only point—I think I am correct—the only point in controversy between us is whether this body can represent to the honorable body yonder that it is constitutional and proper that this House of Representatives should say not only it is right that the State may so far interfere with interstate commerce as to prohibit the sale, but that it shall go farther and say, "You can not even set your liquors down in the State."

I think that is just the point of difference between us. Our gentlemen friends and ladies on the other side think that it is an interference with the right of interstate commerce, of which you are guardians, gentlemen, as representing the General Government, that it is an interference with the right of the General Government to do that, that it is a violation of the right of free contract to say that Louisville, or Peoria, or Cincinnati can not send out and make a contract to deliver

liquors inside the State of Iowa, or going the other way, down in old Maine. Now then, the point that we discuss is this.

One gentleman whom I listened to with great interest this morning, went back to the adoption of the Constitution, and he said very correctly that the desire, the immediate necessity, which led our fathers to the adoption of the Constitution was the desire for uniformity, for harmony between the States, and we who are acquainted with the historic lesson know that there were different lines operated by the different States, that one State would pass a tariff law, another a conflicting tariff law, that there was lack of harmony between the States, and so they said, "We must have one supreme authority, and it shall be the Government acting under the Constitution," and that therefore the Constitution was adopted to provide this harmony, and this harmony will be broken if we interfere with this proposed legislation with the right of contract.

Now, then, the only right of contract which will be interfered with by the operation of this proposed legislation would be the right of contract by which the citizens of one State might deliberately, with malice aforethought, break the laws of another State; that is, by which Illinois from Peoria, or Kentucky from Louisville, might interfere with the operation of the laws of the State of Iowa. Would it be good policy; would it be in the interests of public policy for this body here at the Capitol to make it possible to hold out a sort of bid to Kentucky, to Illinois, to make this a sort of an Iowa? I only use these two States because nobody can deny that Illinois and Peoria do a lot of manufacturing, and Iowa does a lot of what you, perhaps, may call arrogant boasting of its prohibition.

As was stated this morning, I think correctly, all but five States in this Union will be affected by the operation of this law; because it is not only the prohibition States, it is the States that have local option laws, it is the local option counties that will be affected by it. We use only the names of the great States because it is easier to use those than the others. So, then, the point to which we are driven at every turn of this argument, whether it be argued in legal terms, or whether you call it oratory in the popular acceptation of the term, what we are met with at every turn is that the power to regulate interstate commerce may go to the extent that it may forbid the sale, but it can not forbid the introduction into the State of the liquor which would never be introduced if the incident, as I think one gentleman called it, of sale were not—what shall I say, free—

Mr. LITTLEFIELD. Predicated upon it.

Mrs. FOSTER. I thank you.

Mr. LITTLEFIELD. A word I often use.

Mrs. FOSTER. I do not know whether that is predestination or what it is, but it is an excellent word.

Another point. On the one hand we are told that the Congress of the United States does not delegate its power to the State; that is, its power to regulate interstate commerce, and that this would be a delegation of power from the Congress to the State, if the Congress gives to the State the right to say that liquors shall not be introduced into the State. That proposition we flatly deny. Iowa can not say to Illinois, "You shall not send liquors across our territory." That is legitimate interstate commerce. Iowa can not say that liquors shall not pass over the State in transit from Illinois to Nebraska. It does not

say that; it could not say that. It does not presume to say that. But it simply does say "Can not stop; can not land your stuff on the territory of the State of Iowa."

It is not regulating interstate commerce. It is merely regulating the traffic that goes on in its own territory, which it has as much right to do under our Constitution as it has been enforced and made known to us from the times of John Marshall to the time of Chief Justice Fuller, as clearly maintained as any other doctrine under which we live.

Then again it is claimed that it is dangerous to do this, that there is no telling what the States may do. Don't you be concerned about the States, gentlemen. You have just been taught that you can not delegate your power. Don't be worried lest the States may run away with any liberty which you may give them. The States do not ask you for liberty or otherwise. They ask you to keep hands off and let them alone. That is all they ask of this body.

Now, if it is necessary to sort of cripple the States lest they should do something desperate, do not you see that you are assuming by that very proposition that you have a right to do or not to do with the State?

You are not guardians to protect the General Government against the fanaticism of the States. People may get crazy yet. They may pass prohibitive laws against tea and coffee and all manner of such things—they may. If they do you can not help or hinder it. It is not necessary that you should exercise such a guardianship of the States. You say that you can not give the right of the General Government to interfere with the right of interstate commerce. Do not assume the right that you are the guardian lest the States should be run away with by the fanatics of the States.

Take one or the other horn and stick to it, but do not claim on one side that you can not pass this law because it is an attempt of delegation of power of the General Government to the States and then turn around and say "You must not enact it lest you should thereby encourage the States to do something that they ought not to do. We will take care of the States, gentlemen of the committee, we will. Just you take care of the General Government and keep out of the way of the States. That is all we ask.

Again, it has been inquired several times here concerning the right of the individual to import for himself, and whether we would interfere with that, or would we? Gentlemen of the committee, we are not all great lawyers, as you are, but we would not stand before this committee and ask you to put anything into this law which is plainly beyond the power of this committee to do. The States will say what can be done with the individual. The States will say whether John Doe or Richard Roe may import liquors for his own individual use. That is not concerned in this law. We will not be diverted from our advocacy of this law by any scarecrow of this sort. That is not in the law. We did not put it there, and we doubt whether it would with propriety be put there.

I think I am correct in saying—if not I shall be happy to be corrected—that there are two States in the Union, widely separated, who do that very thing. Iowa says no man shall sell intoxicating liquors in the State of Iowa unless he complies with certain conditions; that

is, unless he sells for necessary use, medicinal—and what are the others; scientific—

Mr. LITTLEFIELD. And mechanical.

Mrs. FOSTER. Mechanical, yes; thank you. They do not say religious any more, to be used at the sacrament. They struck that out, did they?

Mr. THOMAS. I think it is there.

Mrs. FOSTER. The necessary uses of liquor may be complied with; that is, a person may sell for those necessary uses, and unless a person is so qualified he can not import. So you see it does cover the point. I think it is South Carolina, clear away from Iowa, I think that is the other State. Iowa and South Carolina stand exactly together on this question. They say that a person may not import for his own use, that no person may import except as provided by the State. There we suppose that the intention is that the State may get all the money, because they have a dispensary law by which the State deals with the liquor traffic. You will remember the decision handed down only yesterday on the right of taxation by the General Government of the traffic in the State of South Carolina, although the State itself dealt in the liquors.

So, whether it is or whether it is not a thing to be desired, the States have acted, and you gentlemen, as a committee, are not asked to act upon that question.

Mr. BARTHOLDT. Will you allow a question?

Mrs. FOSTER. Certainly. I don't know whether I can answer it or not.

Mr. BARTHOLDT. You say you will take care of the States?

Mrs. FOSTER. Yes.

Mr. BARTHOLDT. There is a prohibition law in Iowa?

Mrs. FOSTER. Yes.

Mr. BARTHOLDT. How do you account for the open saloons and the running of breweries there?

Mrs. FOSTER. By the natural depravity of man. That is the way I account for it.

Mr. BARTHOLDT. In other words, if I am permitted to ask another question, the passage of the so-called Muleet law in Iowa is due to the general depravity of man?

Mrs. FOSTER. Yes. The crime of all our States is due to the natural depravity of the human race, and I think there is but little more excuse for the depravity of our people in the matter of the use of strong drink, because, you know, it was a great many years this poor old race of ours had plodded on before it found out that alcohol is a poison. That is the basis of all these things, you know—all the different things; the thing men want is the alcohol, and it was many years before we found out it was bad. A great many other things we have just found out. You know our fathers were wise in their generation, but they did not find out what electricity was until Benjamin Franklin discovered it. So it was with drinking.

People did not find it out, and in the meantime people were being poisoned, and little children were born into the world desiring it because their fathers and mothers and grandfathers had used it and the taste was inherited; they were not to blame. There are a lot of people who drink it to-day who have inherited the taste in the same way—but where was I at?

The States were taking care of this question, and then came the question concerning Iowa, which I suppose the gentleman from Missouri was lead to think of because the State did not take care of it, and he asked, Why didn't they? That is a fair question, because you have a right to say, when I say the States will do it, "Why don't you?" We do the best we can, gentlemen and ladies. That is what we do, the best we can. But the very harmony of our system of law implies that the General Government will help us to do in each State what we want to do, and it defends the liquor traffic, where the State allows the liquor traffic, with just as much pertinacity as it defends a prohibitory State that does not want the traffic.

The men of Illinois, the men of Ohio, and the men of Kentucky are just as secure in their right to manufacture liquors, if the people of those States do not say nay, as we are in Iowa to say it shall not be manufactured. I lived in Iowa once, a good many years ago, and I like to say "we" in speaking of Iowa. I am forced by time to get back to this closing thought, gentlemen.

We are not in this day and age of the world limiting the power of the General Government. We are asserting the right of the States, and we are all the time trying to harmonize legislation in the States. You who are lawyers know that the tendency of legislation is to do that thing. That is, we are asking for uniform laws through your National Bar Association, and then you get up and, as lawyers, try to arrange for harmony between the States. We have been asking for uniform divorce laws lately, because we see there must be as much harmony as possible; because the General Government is careful all the while to see that it does not invade the rights of the individual State.

Gentlemen of the committee, may I not ask you if this is not the tendency of the world at large? We are trying to harmonize even the laws of the nation. While we are respecting the rights of individual nations, this country, taking the lead among the nations, is very careful to indicate how one nation shall not encroach upon another nation. Who was it that just a little while ago, sitting at the head of the diplomatic table of the world, said to two old nations who are fighting one another and have each other by the throat, "Fight if you will, fight if you must, but stay put there; don't invade the administrative entity of China," whatever that means.

Mr. CLAYTON. Keep off the grass.

• Mrs. FOSTER. Yes, keep off the grass. I wish that had been said out loud. That is exactly what we do say.

Now, gentlemen of the committee, here we are as individual States. We have not yet been able to secure so strong a majority of sentiment throughout the country that it will come to this capital and say that it is in the interest of the whole people that the liquor traffic ought not to be allowed anywhere. In the millennium, in the Kingdom Come, perhaps we will get to that; but we are a long ways off now. We can not do it now; that is very plain. But we do say, as John Hay said: "Stay where you are and respect"—what? The administrative entity of the States in their legislation against the liquor traffic. What is this administrative entity? It is the exercise of its police power; that is what it is. There is no discussion about that police power; it has been settled over and over again, as your lawyers have told you: There is no discussion at all; we all know what that means. They

knew in Baltimore the other day, when the flames were going, they knew what police power meant. It meant to blow up valuable buildings to stop the flames; that is police power. Now, gentlemen, that is all I have to say.

Mr. HENRY. I would like to ask you a question for information.

Mrs. FOSTER. Very well, although I do not know everything.

Mr. HENRY. I think you know about this. Is it a fact that there are open saloons in Kansas and Iowa where they have State prohibition laws?

Mrs. FOSTER. I would not like to say so, but I think so.

Mr. HENRY. I have heard so very often.

Mrs. FOSTER. Yes; I would not wonder if you could find some open saloons in Davenport, and I would not wonder if you could find some open saloons in some towns in Kansas.

Mr. CLAYTON. We might examine Judge Thomas of Iowa on that, as he is probably an expert on that.

Mr. HENRY. The judge would not be apt to find them.

Mrs. FOSTER. But, Mr. Chairman, I think if you would go into Kansas or Iowa or any other State you would find dens of iniquity of all sorts that are forbidden by the laws of those States.

Mr. HENRY. I was simply asking for information.

Mrs. FOSTER. I think likely it is so.

Mr. HENRY. And they have State prohibition laws?

Mrs. FOSTER. All laws fail. They would not have them, you know, if the folks did not need them. If it was not for this original sin, you know, we would not have it.

I think, I hope, you will excuse my tribulations. I find something in this committee very provocative of this spirit. I have to guard against my heart getting the better of my head and doing something which would lead you to remark "Oh, well, that is just like a woman." But all the same the sentiment is there. Only yesterday a woman in this city came to me with the greatest happiness and joy. She said "Oh, Mrs. Foster, you know what trouble I was in a year ago; I came to you thinking I would have to ask you to assist me in getting a legal separation from my husband. You know he was a drunkard. I am here to-day to tell you that I have won out." Her face was as radiant as the face of a happy child. "What do you mean?" said I. "He has quit, he has quit; he has not touched a drop for so long. I have won out."

You don't want me to talk that sort of stuff here, do you? No, you don't want me to; but you pass this bill and you will help many a woman all over this country to win out. You will, because there is the old original sin I have told you about, and the law of this country, gentlemen, to be accessory in the original sin in the human heart—

Mr. HENRY. You understand Doctor Bartholdt is not a member of this committee, but we think a great deal of him.

Mrs. FOSTER. I thought he was.

Mr. BARTHOLDT. I should like to introduce—

Mr. DINWIDDIE. Pardon me one moment. I feel the question asked a while ago deserves an answer. I have traveled through Iowa and Kansas as I have from Maine to California, and have observed very largely conditions. It is a fact that in cities in Kansas like Kansas City, Kans., Atchison, Leavenworth, and Witchita and, unless they have changed again in the last year, Topeka, there is a good deal of

violation of law; but generally speaking throughout the State of Kansas there is a very fair and good enforcement of the legislation in that State.

It ought to be borne in mind that Iowa is not a prohibition State entirely. Prohibition law in Iowa is modified (if I am incorrect Judge Thomas will be kind enough to correct me) by what they call a mulct, and what we call in Ohio a tax law. So while the law of the State of Iowa is prohibition, yet it can be modified by local sentiment, and saloons are tolerated. It is a good deal like the organic law of Hawaii. It is prohibitory except as modified by the Territorial law, and they have modified it.

The CHAIRMAN. It has been suggested that we continue in session until 5 o'clock, if that is agreeable to you.

Mr. DINWIDDIE. Your pleasure is mine on that score.

A GENTLEMAN. Mr. Chairman, may I ask this gentleman one question, if you please? I would like to ask simply this: If this bill should become a law (his having pronounced Iowa a prohibition State, and that yet at times the law allows saloons), whether this law would apply to Iowa; whether by this law you could deprive the people of the privilege they have voted themselves?

Mr. DINWIDDIE. I thought I had made it clear. This law does nothing in the world but to give the States full opportunity to regulate this question in their own way under their police powers. It is not new legislation. It does not do anything in the world except give the legislature of the States opportunity to show what they will do, untrammeled by sales and importations from the outside.

Mr. BARTHOLDT. I would like to introduce Major Harrison.

The CHAIRMAN. How long a time will you desire?

Mr. HARRISON. I can not estimate how long I will talk.

STATEMENT OF MAJ. DUNCAN B. HARRISON, OF WASHINGTON, D. C.

Mr. HARRISON. Mr. Chairman and gentlemen of the committee, previous to going into the details of the question at hand I would like with your permission to ask two or three questions of the Revs. Doctor Crafts and Dinwiddie.

The CHAIRMAN. We do not think it advisable to allow that kind of procedure.

Mr. LITTLEFIELD. Can you not put your questions in an interrogatory way in your remarks, and give them an opportunity to answer later?

Mr. HARRISON. All right, sir.

I desire to place on record some exhibits. Exhibit A is a petition to the United States Senate in favor of the Hepburn-Dolliver bill. Exhibit AA is a petition to the House of Representatives in favor of the Hepburn-Dolliver bill. Exhibit B is a book entitled "Moral Legislation in Congress, Past and Pending." Exhibit C is a book or pamphlet entitled "American Anti-Saloon League." Exhibit D is a pamphlet entitled "Hearings before the Committee on Immigration of the United States Senate." Exhibit E is a pamphlet entitled "The McCumber bill to be pressed in the United States Congress." Exhibit F is a pamphlet entitled "Scientific Testimony on Beer." Exhibit FF is a bill entitled "Beer and the Body." Exhibit G is a pamphlet entitled "High License in Massachusetts, New York, and Alaska."

Exhibit H is a pamphlet entitled "Moral Victories, Won and Waiting." Exhibit I is a book entitled "The History of the International Reform Bureau." That is all for the present.

Mr. LITTLEFIELD. Do you want all these matters to go in as part of your statement?

Mr. PALMER. What is the purpose of the exhibits?

Mr. HARRISON. For the purpose of demonstrating positively beyond the peradventure of doubt, together with additional testimony, letters, and affidavits, that all and every particle of the sentiment that has been created among the public, and every petition that has been gotten up has been influenced by false statements in these exhibits, statements, gentlemen, that I can positively prove beyond the peradventure of doubt are without foundation and without the semblance of truth.

Mr. LITTLEFIELD. Do they affect the merits of the bill?

Mr. HARRISON. Absolutely.

Mr. LITTLEFIELD. Why not come to the specific proposition on which you rely, unless it embarrasses you.

Mr. HARRISON. It will embarrass me relative to the argument, because these exhibits are cumulative and corroborative of what I wish to say.

Mr. LITTLEFIELD. It would be suggested that that is an unusual proceeding, and perhaps people on the other side have been engaged in a similar propaganda.

Mr. HARRISON. There is no question about it, that it is unusual, but, on the other hand, the people I represent have not been engaged in a like method of soliciting in securing petition and working up sentiment.

Mr. LITTLEFIELD. Or creating sentiment in opposition to legislation?

Mr. HARRISON. Not by false statements.

Mr. Chairman and gentlemen, I fully realize the difficulties which confront me to combat the voluminous evidence presented to you by the Rev. Dr. Wilbur F. Crafts, superintendent of the International Reform Bureau; the Rev. Dr. Edwin C. Dinwiddie, superintendent of the Anti-Saloon League; Mrs. Margaret Dye Ellis, superintendent of the Woman's Christian Temperance Union, and numerous other eloquent witnesses that this and the preceding bill known as the Hepburn Bill 4072, whose passage the witnesses whom I have named eloquently advocate.

I am placed in the position of sincerely regretting my impotency as a public speaker. I am not an orator as are Doctor Crafts, Doctor Dinwiddie, Mrs. Ellis, and the witnesses for their various associations whom they have presented before you, and perhaps after their flights of oratory it is fortunate for you that I am just a plain, ordinary individual, possessed with a knowledge of facts, and will therefore confine myself to facts and nothing but facts.

Not facts in name, Mr. Chairman and gentlemen, but absolutely indisputable facts, based on foundations which are inconvertible and can not be shaken. Facts and figures and proofs—the figures and proofs being twin brothers to the facts—not garbled, not supposititious, but away and above beyond suspicion.

Mr. Chairman and gentlemen, some of the proofs, in point of fact all of the proofs, which I will submit to you for your consideration will be startling, some of them appalling, and many of them will shock you when you realize their far-reaching effects. Yet everything in

the shape of evidence which I will present to you will be indisputably proven. And I, who will present them, will stand ready to answer to you and to the laws of my country if guilty of any misstatement, any distortion, or any misrepresentation.

You have all heard the opinions of the officers of these reform associations expressed before you, and further, printed and distributed broadcast throughout the world, through these exhibits, whose authenticity they have acknowledged, and in which they openly state and advertise that it is their aim and ambition and life's desire to suppress, to ruin, to annihilate, the great brewing industry of America.

Think of this, Mr. Chairman and gentlemen. They seek to ruin and destroy the absolutely greatest industrial developer (and I speak understandingly) to-day in the United States of America—for that is what the American brewing industry positively is, and which I will conclusively demonstrate.

Now, Mr. Chairman and gentlemen, let me show the disastrous effects that would result if this measure, the Hepburn bill, were to become a law, and the appalling effects to the country at large if the efforts of these reform associations and their officers were to succeed in having this measure passed.

Allow me, however, here to state, that beer is not an intoxicant, as claimed by the officers of these associations, and this fact has been proven beyond the question of doubt by the most noted analytical experts in the entire world, by our own analytical experts, by the investigations and analyses of the Department of Agriculture, by the additional testimony of many of the most celebrated physicians and professors and savants given at the Pure Foods Investigation of the United States Senate Committee on Pure Foods and published in the report of that committee, Senate Report No. 516, Fifty-sixth Congress, first session, demonstrating that the beers, ales, and porters, lagered and brewed by the brewers of America are absolutely free of impurities, preservatives, or of any ingredients deleterious to health, and further, that they contain such a small proportion of alcohol as to be justly considered nonintoxicants.

There are 1,870 breweries in the United States of America—

Mr. LITTLEFIELD. Before you go to that point, if it does not disturb you, as a matter of fact, I would like to know what standard these gentlemen have for intoxication. If it disturbs you, however, do not stop.

Mr. HARRISON. They are recognized as some of the greatest authorities; they are well-known professors, and the analyses of these samples of beers and ales and porters were made by the United States Government Department of Agriculture. There were several hundred samples purchased throughout the United States, and every one of them was analyzed by the Bureau of Chemistry, under Doctor Wiley, and of all the beers, ales, and porters that were analyzed by that Department through the pure-food investigation committee of the Senate not one was found to contain a substance of any kind deleterious to health, or a preservative of any nature, or an impurity of any nature.

Mr. LITTLEFIELD. That goes to the question of purity or impurity. What I would like to know is whether these distinguished men held that beers, ales, and porters are not intoxicating.

Mr. HARRISON. If you will allow me to continue I will demonstrate that later on.

Mr. LITTLEFIELD. Very well; I do not want to disturb you. I simply had curiosity to know what standard they used to establish that process, but you will reach that later.

Mr. HARRISON. During the fiscal year ending June 30, 1903, the brewers of America brewed 47,547,856 barrels of beer, in 1,870 breweries in the United States of America, located as follows:

Alabama	5	New Jersey	61
Arkansas	1	New York	257
California	115	South Dakota	5
Colorado	21	Ohio	127
Connecticut	23	Oregon	28
Delaware	5	Pennsylvania	238
Florida	1	Rhode Island	9
Georgia	6	South Carolina	1
Idaho	23	Tennessee	5
Illinois	121	Texas	11
Indiana	43	Utah	9
Iowa	24	Virginia	7
Kansas	3	Washington	31
Kentucky	26	West Virginia	8
Louisiana	8	Wisconsin	170
Maine	5	Wyoming	4
Maryland	46	Alaska	4
Massachusetts	43	Arizona	1
Michigan	97	District of Columbia	4
Minnesota	93	New Mexico	3
Missouri	58	Oklahoma	2
Montana	23	Hawaii	3
Nebraska	18		
Nevada	6		
New Hampshire	57	Total	1,870

These brewers paid for taxation to the United States Government the enormous sum of \$47,547,856—20.60 per cent of the entirety of the internal revenue receipts for the fiscal year ending June 30, 1903.

Since the inception of the internal-revenue tax on September 1, 1862, the brewers of the United States have paid into the National Treasury, up to and including the fiscal year ending June 30, 1903, the enormous sum of \$928,000,000 in round numbers, per this Treasury statement. Think of it, Mr. Chairman and gentlemen, the brewers of America pay into the United States 20.60 per cent of the entirety of the internal-revenue tax, or enough money yearly to support two-thirds of the standing Army of our great nation, more than half of our incomparable Navy.

And this is the industry which these reform associations and their officers seek to destroy.

There is invested in the brewing industry in this country for their magnificent plants and institutions, in actual bona fide capital, over \$790,000,000. Exclusive of the enormous taxes which the brewers pay the National Government, they pay to the various States of the Union for taxes on their properties annually over \$27,000,000.

At the outbreak of the Spanish-American war the brewers patriotically and gladly accepted the double war tax of \$2 per barrel upon their products as their share of the war burden. And during the three years that double war tax remained upon their industry over 260 failures and consolidations took place in their midst.

They suffered this crushing burden of taxation in uncomplaining silence until our country had safely recovered from the hardships and expenses incurred by that war, and then, and not until then, did the

brewers ask for relief, which had been agreed upon, from the crushing double war tax which threatened and imperiled their very existence.

Mr. PALMER. You say they paid \$928,000,000 in taxes during what period?

Mr. HARRISON. From the 1st day of September, 1862, up to and including the 30th day of June, 1903, they paid \$928,383,000, as certified to by the Treasury Department.

Mr. PALMER. Was that on beer?

Mr. HARRISON. Yes, sir.

Mr. PALMER. Have you the figures to show what that cost the people of the United States?

Mr. HARRISON. Yes, sir. I will come to that a little later on.

Mr. PALMER. What the consumers paid for that beer on which the tax was \$928,000,000.

Mr. LITTLEFIELD. Involving the element of profit to the producer?

Mr. HARRISON. The tax on the brewers industry represents about 23.9 per cent of their entire income. That is the Government tax. In other words, it has been demonstrated that the brewers of America pay about 24 or 25 cents on every dollar they receive, that much in taxation to the Government, or very nearly that much.

Mr. LITTLEFIELD. On their gross income?

Mr. HARRISON. On the gross receipts from beer, ales, and porters.

Mr. LITTLEFIELD. For instance, what does a barrel of ale sell for?

Mr. HARRISON. The average price is about \$4.01; I think that is the average.

And, lest we forget it, Mr. Chairman and gentlemen, the present tax of a dollar a barrel on beer is also a war tax and was imposed by the Government in 1862, and after the conclusion of the war was continued voluntarily and patriotically by the brewers as their share of the burdens of the Government. This present tax of \$1 per barrel represents very nearly 25 per cent of the entire revenue of the brewing industry; 25 per cent of all their sales, 25 per cent of every dollar the brewers receive on their products goes to the United States Government for taxation, for the benefit of all the people of the land, including these reform associations and their officers. In these keen days of competition and advance prices for commodities this 25 per cent represents all—absolutely all—that the brewing industry can stagger under in the shape of taxation and exist.

Through the great brewing industry and its various branches, over 773,000 men are employed—not men, women, and children, but men, industrious wage-earning men, citizens, and voters, who through their wages support over 3,800,000 members of their families in our great country, per accurate Census reports, 1902.

Indirectly, and through their affiliations with kindred trades, and through the farmers, who grow for them their hops, barley, rice, rice-meal, rice-flour, hominy, hominy grits, sugar, sugar-cane, and beet sugar, the brewers of America give support to another 1,600,000 American citizens, thus directly and indirectly furnishing through their vast industries employment and support to over 5,465,000 people of the population of this country, per accurate Census reports, 1902.

From the products of the soil the brewers of America pay over \$117,000,000 annually to the farmers of the country per accurate Census reports, 1902.

In hops, barley, rice, rice meal, rice flour, hominy, hominy grits,

sugar, sugar cane, and beet sugar the brewers annually invest over \$64,000,000 per year with the farmers of this country, per accurate census reports, 1902.

And these products are not confined to any section of this country; but from ocean to ocean, from the Atlantic to the Pacific, in every section of every State of the Union the farmers of our land thrive upon the brewing industry.

Four million six hundred and sixty-one thousand and sixty-three acres of farm land are devoted to raising barley alone for the brewers of America, per accurate census report, 1902.

The value of the barley crop to the farmers directly, aggregates the enormous sum of \$61,808,634, per accurate census report, 1902.

During the fiscal year ending June 30, 1903, the brewers of America brewed 47,547,856 barrels of beer and paid for taxation to the United States Government the enormous sum of \$47,547,856.08, 20.60 per cent of the entirety of the internal-revenue receipts for the fiscal year ending June 30, 1903.

Since the inception of the internal-revenue tax on September 1, 1862, the brewers of the United States of America have paid into the National Treasury, up to and including the fiscal year ending June 30, 1903, the enormous sum of \$928,383,456.22, per this Treasury statement.

Think of it, Mr. Chairman and gentlemen, the brewers of America pay into the United States Treasury 20.60 per cent of the entirety of the internal-revenue tax, or enough money yearly to support two-thirds of the standing Army of our great nation, or more than half of our incomparable Navy.

And this is the industry which these reform associations and their officers seek to destroy.

There is invested in the brewing industry in this country for their magnificent plants and institutions, in actual bona fide capital, over \$790,000,000.

Exclusive of the enormous taxes which the brewers pay the National Government, they pay to the various States of the Union for taxes on their properties, annually, over \$27,000,000.

At the outbreak of the Spanish-American war the brewers particularly and gladly accepted the double war tax of \$2 per barrel upon their product as their share of the war burden.

And during the three years that double war tax remained upon their industry, over 260 failures and consolidations took place in their midst. And they suffered this crushing burden of taxation in uncomplaining silence until our country had safely recovered from the hardships and expenses incurred by that war; and then, and not until then, did the brewers ask for the relief, which had been agreed upon, from the crushing double war tax which threatened and imperiled their very existence.

And lest we forget it, Mr. Chairman and gentlemen, the present tax of a dollar a barrel on beer is also a war tax, and was imposed by the Government in 1862; and after the conclusion of the war was continued voluntarily and patriotically by the brewers as their share of the burdens of the Government.

And this present tax of one dollar per barrel represents very nearly 25 per cent of the entire revenue of the brewing.

And of this mammoth crop of barley, with a total of 134,954,023

bushels raised, only 8,714,268 bushels were exported and otherwise used, while the balance, the enormous balance of 126,240,755 bushels were raised and consumed in the product of beer, ales, and porters by the brewers of America.

In the State of Iowa alone, from which this Hepburn bill (H. R. 4072) originates, the farmers last year received \$4,861,809 for the one product—barley, nearly all of which was paid for by the brewers of America.

In the great Southern States of this country, embracing Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Missouri, North Carolina, South Carolina, Tennessee, and Texas, over a million acres of farm lands are devoted to raising rice, hominy, hominy grits, rice meal, rice flour, sugar, sugar cane for the brewers of America, per accurate census report, 1902.

Hundreds of thousands of acres in the Pacific coast States, embracing California, Oregon, and Washington, and the State of New York, are devoted to the raising of hops, and from these several States 200,000 bales of 180 pounds net per bale, with a total of 36,000,000 pounds, at an average value of 25 cents per pound, or a total of \$9,000,000 to the farmer, were produced last year for the brewers of America, per accurate Census report, 1902, and this specific report from the United States Department of Agriculture.

Hundreds of thousands of acres of farm lands in every section of the country are devoted to raising hay, oats, grain, and general feed for the armies of horses of the brewers of America, per accurate Census report, 1902.

Thousands of acres of farm lands are devoted to the culture of beet sugar, of which the brewers of America are large consumers, per Census report, 1902.

Thousands of horse breeders and cattle raisers depend entirely for sustenance upon the brewers, and many of these farmers and horse breeders, with their families, exist altogether through the industry of brewing.

Mr. LITTLEFIELD. Does the Census report show how much hay the brewers' horses consume?

Mr. HARRISON. No; but we have it. The way we get it is, there is so much hay to the acre, and so many horses to the brewer, and we know how many brewers there are, and so we estimate it, knowing what the average price of the keep of horses is per month.

Mr. LITTLEFIELD. I had curiosity to know whether the Census went into the details.

Mr. HARRISON. The Census gives those figures accurately.

There is no State in the Union that does not produce from the soil for the brewing industry.

Why, Mr. Chairman and gentlemen, I could continue all day to recapitulate to you the facts relative to this great brewing industry, and the benefits which accrue from it, and then not do the subject justice. And it is this industry, with its enormous ramifications, which has been assailed by H. R. 4072, and through these exhibits which have been placed before you, and by which I will demonstrate to your entire satisfaction, and prove beyond interrogation that this bill and all of the sentiment created in favor of this bill, including the avalanche of petitions which you have received, and which have been thrust upon you, have originated.

And let me state here that all, every one of these petitions, emanate from these reform associations and through their officers, and it is the brewing industry of America, particularly, which they assail.

Why, Mr. Chairman and gentlemen, if reform is desired there is absolutely no greater conductor to honest reform in the misuse and abuse of intoxicants than can be had through the beers, ales, and porters of our American brewing.

Beer is a greater need and necessity than all of the combined drugs in the pharmacopeia of medica, it is meat and drink to millions of our citizens, not alone the poor man's drink, but the drink of the debilitated, the sick, the weary, the senile, and the strong.

What would the acutely nervous American woman do without this beverage? Go ask this question of the physicians of the land, and they will answer with one accord, the loss of beer to humanity would be irreparable.

Mr. LITTLEFIELD. What is your proposition; that beer is not intoxicating?

Mr. HARRISON. I say that by investigation and analysis the Department of Agriculture of the United States of America has proven beyond dispute that there are no impure American beers, ales, and porters. The records of the Department of Agriculture show that there were purchased under the pure food investigation of the Senate of the United States (Senate report 516, Fifty-sixth Congress, first session), hundreds of samples of American beers, ales, and porters in the open market, in nearly every city, town, and hamlet of the Union, and it was demonstrated by minute chemical analysis, conducted by the Bureau of Chemistry, under Professor Wiley, of the Department of Agriculture, that none of the samples were found to contain impurities or ingredients of any nature deleterious to health. That I have already stated.

Mr. CLAYTON. Will you let me ask you a question there?

Mr. HARRISON. Yes, sir.

Mr. CLAYTON. What percentage of the standard beer is alcohol?

Mr. HARRISON. About $3\frac{1}{2}$ to 4 per cent.

Mr. CLAYTON. It runs as high as 5 per cent, does it not?

Mr. HARRISON. It depends entirely upon the class of the brew. Beers fluctuate.

Mr. CLAYTON. If it is only $3\frac{1}{2}$ per cent, and a man has the carrying capacity, it could make him drunk, could it not?

Mr. HARRISON. As you state, "If a man had the carrying capacity." I have never seen one yet. It is a proven fact that two-thirds, even a greater proportion, of beer is food, and this is the industry that these reform associations and their officers seek to harrass and destroy. I challenge them to point to one overt or covert act which can be attributed justly to the brewers of this country.

I invite attention to the magnificent institutions created by the brewers of America. I point to their stupendous buildings and development plants, forming cities in themselves. I invite attention to their splendid business methods; to the countless model homes which they have erected for their workmen; to their beneficent charities, public and private; to their sterling citizenship; to their sobriety and morality; to their devotion to their families; to art, to music, and to the higher educational branches, and to the indisputable fact that they are constantly creating, continually advancing, always progressing,

ever building up, while these associations and their officers are seeking to pull down, to tear down, ever striving to destroy—to obliterate.

Mr. PALMER. Do you argue that the brewing business is a benevolent institution?

Mr. HARRISON. I do not. It is not my desire to place a crown of glory or halo around the brewers, but I desire to represent the facts about them, which is that they are sterling business gentleman worthy of consideration and respect and that they do not deserve the slander and vituperation that is cast upon them by these associations through the medium of misrepresenting documents of this nature which have been circulated, according to their own statements, by the millions in every town and hamlet of the United States, and abroad, also, for the purpose of creating sentiment in order to crowd the Hepburn bill through.

I ask these associations and their officers, and I proclaim my interrogations from the house top, What recompense can you and will you give for the millions in value which you seek to destroy? How much food and clothing, and creature comforts will you expend to the millions of people whose positions you seek to take away from them?

How will you recompense the hundreds of thousands of farmers of our country for their barren fields, their empty storehouses if you are successful in your efforts to pass these measures against the brewing industry of America?

How will you educate the millions of children whom you seek to deprive of education by denying the wages of labor to their fathers and brothers?

How many homes will you provide for those whom you render homeless?

How will you restore the millions to the Treasury of the United States, and the millions to the treasuries of the various States of the Union, if you deprive them of the brewers' revenue through your proposed bills?

By launching additional taxation on the general public?

Can you feed the hungry? Clothe the naked? Attend the sick? House the homeless? Educate the children? Administer to the dying, and bury the dead of those whom you seek to deprive of a livelihood?

I answer no, a thousand times no.

Go and investigate for yourselves, Mr. Reformers. Go view the glorious charities of the dear, dead Captain Pabst. Go inspect the charities of the dead brewer, William Lemp, and the beneficent charities of the hundreds of other brewers, living and dead, whom I could name, and you will witness their practical, Christian methods of reform in the shape of model homes, creature comforts in plenty, consideration, kindness and happiness, virtue and intelligence among their workmen, with the best of educational facilities for their children, and with sobriety and morality as their keynotes.

Go attend the brewers' yearly conventions, both national and State, in the various cities of the land. Witness their dignity and commendable deportment. Mark their proclaimed patriotism and devotion to religion and country. Listen to their proclamations of reform. Hearken to their prescribed methods for the suppression of vice, of "red lights," of dens of infamy and ill fame, and you will realize and comprehend their standard of morals, and their methods of grand, practical, Christian reform, which you will do well to emulate.

Mr. Chairman and gentlemen, right here I ask permission to digress and read a few brief extracts on the subject of practical reform from the brewers of America, which are filed in the archives of the United States Brewers' Association, and were printed in nearly every newspaper in the land, but evidently escaped the notice of these reform associations and their officers.

These were the words of Mr. George J. Obermann (the then president of the brewers' association) in June, 1895:

The brewers of this country will not only be in a position to cheerfully acquiesce to any statutes and ordinances tending to regulate the saloon business and ridding communities of objectionable places, but will be pleased to take the initiative in such movements. They realize that all favoring certain restrictions are not fanatical prohibitionists, nor inimical to the brewing industry, nor that they believe that the drinking of a glass of beer is sinful. They realize, too, that there is an element in every community whose opinions are entitled to respect and whose wishes they are glad to heed, and while desiring, perhaps, certain restrictive legislation, are yet broad-minded, fair people, and not inclined "to reform" their fellow-citizens with a club.

I am able to state without fear of successful contradiction, that unless there lurks behind reform in such directions the hidden scheme, the entering wedge, for sweeping prohibitory measures (and usually we find that to be the case), the brewers have no where, collectively or singly, opposed any measure thought right and reasonable by the authorities, or good citizens.

And why should we not feel and act thus? As good citizens we are interested in good government, and peace, and order, and as brewers we feel that we do not need disreputable places as an outlet for our product. As brewers of a wholesome, healthful beverage, we feel that we ought to have, and believe do have, right-thinking people for our friends.

Again the moral sentiments of the brewers spoken by President Leo Ebert, in June, 1897, at the National Brewers' Convention, in which he said:

Our best achievement during my tenure of office is the marked strides made by the brewing industry, as a whole, for the elimination of disreputable retailers.

Again, the sentiment voiced by President Rudolf Brand, when he spoke at the national brewers' convention, representing the entirety of the industry, these words:

The most gratifying feature of my administration was the constancy and persistency displayed by the entire brewing industry in their efforts to prevent the issuance of licenses and the sale of our product to discredited places.

We must, as good citizens, ever strive to crush out these evils.

President N. W. Kendall, his successor, at the national convention in June, 1901, freely voiced the moral sentiments of the brewers when he said:

The brewing industry has made vast strides in the right direction by continuing to decline to enter into contracts with resorts of questionable character to act as their retailers.

Our present president, Mr. Joseph Theurer, said, on accepting the office in 1903:

It must be our constant aim to suppress the "red lights" and places of low resort which still inhabit our cities. We have made much progress, but must be constantly on the alert in this particular.

The healthy moral sentiments of these gentlemen, representing the entirety of the brewing industry, can well be accepted as the standard of the brewers of America, and in my humble conviction it is the proper class of reform, and will be accepted as such by all thinking, judicious men.

Contrast if you will, Mr. Chairman and gentlemen, the distinction and difference between the sentiments, attitudes, and methods of the brewers of America, and the methods, attitudes, and sentiments of these associations and their officers.

And these manly men, and their stupendous industry, are what these associations are not only seeking to destroy but loudly proclaim and advertise, that annihilation of this industry is their sole object, through statements and with testimony, every word of which is either garbled, distorted, misrepresenting, or manufactured, and without the semblance of truth.

Mr. Chairman and gentlemen, you constitute the judiciary committee of the greatest of all legislative bodies, the Congress of the United States of America. You are placed here by the voices of the people as the representatives of the whole people. You are our judge and jury, and we realize that it is for you to decide the merits and demerits of the question now before you. We also realize that it is your bounden duty to decide between the right and the wrong, and to probe to its fullest extent the testimony presented before you regarding this measure, the Hepburn bill, H. R. 4072.

It is for you to discriminate between the truth and the untruth; between deceit and falsehood on the one hand, and honesty and integrity as their opponents.

Mr. LITTLEFIELD. Now, I call your attention to the fact that you have not yet told me how these men held that ale, beer, and porter is not intoxicating.

Mr. HARRISON. By their investigation; by their evidence to which I have referred you.

Mr. LITTLEFIELD. You are going to reach that later?

Mr. HARRISON. It forms part and parcel of my entire arraingment of facts.

Mr. LITTLEFIELD. That is, you will furnish the findings of these distinguished scientists to the effect that beer, ale, and porter are not intoxicating?

Mr. HARRISON. Yes; not intoxicating in the accepted sense as spirituous liquors.

Mr. LITTLEFIELD. And also the standard by which they come to the conclusion that it is not intoxicating?

Mr. HARRISON. Do you claim I made that statement?

Mr. LITTLEFIELD. Yes.

Mr. HENRY. Do you mean to say that beer won't make a man drunk?

Mr. LITTLEFIELD. He says that these distinguished men have so held and demonstrated, and I want to know who they are and the standard by which they measure the intoxicating and nonintoxicating drinks.

Mr. HARRISON. It is contained in the statements of the expert testimony and researches relative to this subject contained in the pure-food investigation held before the Senate committee.

Mr. LITTLEFIELD. Give me the name of one chemist or one scientist who undertakes to say that he has demonstrated by analysis that beer, ale, and porter are not intoxicating?

Mr. HARRISON. I beg your pardon; but I am rather of the impression that I did not make that statement in the fullest sense.

Mr. LITTLEFIELD. If you did, do you withdraw it?

Mr. HARRISON. No; I do not.

Mr. LITTLEFIELD. You stick to it.

Mr. HARRISON. No; I want to qualify it. I think my statement was that they contained so slight a quantity of alcohol—

Mr. LITTLEFIELD. I do not want to embarrass you.

Mr. HARRISON. I am not embarrassed.

Mr. GILLETT, of California. I think he said if a man could hold enough it would make him drunk.

Mr. LITTLEFIELD. No; he did not say that. In the opening of his remarks he made the general assertion that these distinguished men had so held. Now, if they have I would like to have him make that statement good.

Mr. CLAYTON. I understood his remark as you have stated it.

Mr. LITTLEFIELD. That is the way he made it; he said beers, ales, and porters were not intoxicating.

Mr. HARRISON. I mean the beers, ales, and porters brewed by the brewers of America are absolutely free of impurities. This was my statement:

Allow me, however, here to state that beer is not an intoxicant, as claimed by the officers of these associations, and this fact has been proven beyond the question of doubt by the most analytical experts in the entire world, by our analytical experts, by the investigations and analyses of the Department of Agriculture, and by the additional testimony of many of the most celebrated physicians and professors and savants, given at the pure foods investigation of the United States Senate Committee of Pure Foods, and published in the report of that committee, Senate Report No. 516, Fifty-sixth Congress, first session, demonstrating that the beers, ales, and porters lagered and brewed by the brewers of America are absolutely free of impurities, preservatives, or of any ingredients deleterious to health, and, further, that they contain such a small proportion of alcohol as to be justly considered nonintoxicants.

Mr. SMITH, of Kentucky. And you refer to this Senate document as proof?

Mr. HARRISON. Yes.

Mr. LITTLEFIELD. Then I do not understand you to say that these men hold that they are nonintoxicating, but your conclusion is that they are nonintoxicating?

Mr. HARRISON. Yes, sir; that is my deduction.

Mr. LITTLEFIELD. Then we understand each other?

Mr. HARRISON. I am glad you do. Mr. Chairman and gentlemen, before I pursue my further statement I would very much like to distribute some of these documents so as you can follow me in connection with this.

Mr. LITTLEFIELD. Before you go into that, could you tell me about what proportion of the 47,000,000 barrels of beer that are sold are sold now by virtue of the provisions of the interstate commerce law?

Mr. HARRISON. I beg your pardon.

Mr. LITTLEFIELD. What proportion of the amount of beer now being sold is sold by virtue of the provision of the interstate commerce law enabling the brewers to sell in violation of the laws of the different States?

Mr. HARRISON. I will answer your question by stating that I do not acknowledge that the brewers sell in violation of the laws of the various States, to start with. As to number two, it would be a difficult matter to determine, and it could not be ascertained minutely to the question of a barrel, as to what proportion of beer and ale which are distributed.

Mr. LITTLEFIELD. I mean distributed under the circumstances described here in connection with the hearing.

Mr. HARRISON. It would be impossible for me to tell, but I can possibly get those figures.

Mr. LITTLEFIELD. I would be glad if you would do it and put it in the hearing.

Mr. HARRISON. I will be glad to do it.

Mr. LITTLEFIELD. For what purpose do you wish us to look at Document 159, which you have distributed—that is, what is the object of this exhibit?

Mr. HARRISON. No. 150 is entitled, "Moral legislation in Congress, passed and pending."

Mr. LITTLEFIELD. This is 159.

Mr. HARRISON. That is the American Anti-Saloon League?

Mr. LITTLEFIELD. Yes.

Mr. HARRISON. I desire to call your attention to the sixth paragraph in connection with that, but previous to that, it is all in sequence, if you will allow me in my own way to continue—

Mr. LITTLEFIELD. Take your own way.

Mr. HARRISON. Thank you. I respectfully invite your attention to Exhibit B, entitled "Moral legislation in Congress passed and pending." This is Senate Document No. 150, Fifty-eighth Congress, second session. On page 8, second or third paragraph, under the caption "Interstate liquor bills," occurs the following:

Next in logical order should come the two "states' rights" bill to protect State liquor laws of all kinds against outside nullifiers, acting under Federal powers of interstate commerce and internal revenue.

The Hepburn-Dolliver bill (H. R. 4072; S. 1390), originated by the Iowa Anti-Saloon League, improved by the National Anti-Saloon League, with proposed amendment of the Reform Bureau in *italics*.

On the same page (8), same exhibit (B), under the caption "German-Americans and the Hepburn bill," the following statement occurs:

At the first hearing of the bill, January 20, 1904, all the opposition was made in the name of German-Americans, of whom thousands had been deceptively marshaled by the brewers to defend their "speak-easy" trade. Many of these opposers are law-abiding men, who do not know that it is anarchy and not liberty which they have been called to defend.

On page 9, second paragraph, the following statement is made:

The Reform Bureau is cooperating with the Anti-Saloon League, W. C. T. U., and the National Temperance Society in pressing this important measure (Hepburn, H. R. 4072) to enactment. Besides numerous syndicate articles in the press, and platform appeals the bureau has sent out more than 50,000 documents and petition blanks in promotion of this bill.

On the same page (9), fourth paragraph, occurs the following:

To stop the issuing of Federal liquor tax receipts in no-license territory. New Humphreys bill, H. R. 11824, introduced by Hon. B. G. Humphrey, M. C., at the request of the Reform Bureau.

On page 10, first paragraph, is the following: "Proposed prohibition for the 'Indian country' in Alaska," amendment to be proposed to S. 3340, to prevent the licensing of saloons in Alaska, except where white people constitute the majority of the population.

On page 10, fifth paragraph, occurs the following: "National Inquiry Liquor Commission." National Temperance Society's Gallinger liquor inquiry commission bill (S. 3289) providing for commis-

sion of seven persons appointed by the President to investigate the liquor traffic and its effects, the legal methods of restraint, and with Reform Bureau amendment in italics.

On page 11, seventh paragraph, under the caption: "Bills in Defense of the American Civil Sabbath." To close Lewis and Clark Portland Exposition of 1905, on Sunday. Hawley amendment (S. 276), appropriating money for the Lewis and Clark Exposition be, and hereby is, amended in section 25, so as to read.

On pages 15, 16, and 17, I invite your attention to the article and exhibits under the caption: "The sacred right of petition." On page 17 under the caption: "Local reform work of the bureau."

Third paragraph, I call your attention to statement:

Millions of petitions and practical reform documents have been sent to reform leaders and workers everywhere, reaching every city, village, and borough of the United States and every foreign land.

On page 18 under the caption, "Not a Government Bureau," I call attention to the first line reading—

Some suppose the reform bureau is one of the official bureaus of the Government.

On page 7, this same exhibit, I call your attention to the last four paragraphs under the caption, "Bills in restraint of intoxicants and opium," "To prohibit liquor selling in all Government buildings. (McCumber-Sperry bill S. 2352, H. R. 7034.)"

The argument for this bill will be found in Senate document 379, Fifty-seventh Congress, first session and may be had of any Senator.

On nineteenth page you will note the line, "McCumber-Sperry bill."

EXHIBIT "C."

I beg to call your attention to Exhibit "C," entitled "American Anti-Saloon League." Senate document 159, Fifty-eighth Congress, second session.

You will find on the second page of said document, sixth paragraph, the following statement:

In my last report, December 10, 1902, almost with the opening of Congress, I stated that as soon as the convention was over I would immediately take up the Hepburn bill, get it into shape, and undertake to crowd it through.

Mr. Chairman and gentlemen, the two exhibits, viz, "B" and "C," which I have placed before you, I maintain and will prove, establish the fact that the measure now before you for consideration entitled the Hepburn bill, H. R. 4072, and all of the other bills mentioned in these extraordinary exhibits, "B" and "C," entitled "Moral legislation in Congress, passed and pending," and "Anti-Saloon League," emanate from said societies and their officers, as proven by the language contained in said Exhibits "B" and "C."

I further claim that the exhibits which I am now about to place before you, viz:

"D," "E," "F," "FF," "G," "H," "I," all of which contain misstatements, fabrications, and absolute falsehoods, and all of which were circulated in conjunction with Exhibits "A" and "AA;" that said Exhibits "D," "E," "F," "FF," "G," "H," and "I," with all of their misstatements and fabrications, were used as a lever in conjunction with Exhibits "B" and "C" to secure signatures to Exhibits "A" and "AA" (petitions), and thereby falsely creating sentiment, and

falsely influencing legislation in favor of the reporting and passage of said Hepburn bill, H. R. 4072.

I, therefore, maintain that all of the exhibits now placed before you are cumulative and corroborative evidence of the statements I have made, and part and parcel of the testimony which I am about to offer.

EXHIBIT "D."

I beg to call your attention to Exhibit "D," entitled "Hearing before the Committee on Immigration of the U. S. Senate." Senate document 379, Fifty-seventh Congress, first session.

This was the testimony, Mr. Chairman and gentlemen, given by the members of these associations before the Committee on Immigration of the Senate, on the bill S. 3969, entitled "To prevent the sale of intoxicating liquors in immigrant stations and other public buildings."

On the strength of the false testimony given at this hearing the sale of beer was excluded from the immigrant stations throughout the country.

The same false testimony given at this hearing is now being used in the various exhibits placed before you, for the purpose of creating sentiment and influencing legislation in all measures introduced against the brewing industry of America, and particularly directed and used by distributing said false testimony by the millions "in every city, village, and borough of the United States and every foreign land," to influence legislation, and "crowd" the Hepburn bill, H. R. 4072, through.

Mr. PALMER. Which particular testimony do you refer to as false?

Mr. CLAYTON. In this document.

Mr. HARRISON. I will demonstrate that to you. Very nearly all of it.

Mr. CLAYTON. I wish you would take some specific thing

Mr. LITTLEFIELD. File a bill of particulars.

Mr. CLAYTON. Yes; file a bill of particulars, so we will know what you are driving at. You have been promising to shock us, now we are ready to be shocked.

Mr. GILLETT of California. I would like to ask whether you think it is against the merits of the bill that the people who are in favor of it have been industrious in bringing it before Congress?

Mr. HARRISON. No, I do not claim that; but I claim that the greater portion of the sentiment that has been aroused in Congress in favor of the bill and the majority of these petitions have been gotten up through falsehoods.

Mr. LITTLEFIELD. If it does not embarrass you, give us a sample of the falsehoods.

Mr. CLAYTON. In this Senate Document 379, to which you have referred, I would like to see some of the falsehoods in that.

Mr. HARRISON. Yes, sir.

Mr. LITTLEFIELD. If it is not embarrassing.

Mr. HARRISON. It is not half as embarrassing to me as it will be for some of these witnesses, as you will see. On page 8 of Exhibit D you will find under the caption "Statement of Mrs. Ella M. Thatcher," who is superintendent of the department of soldiers and sailors in the National Woman's Christian Temperance Union, the following:

We found at Marion no saloon; in the other homes most of the men looked like paupers and many of them like drunkards, which they really are. They ought to

be in an inebriate asylum. They should not be mixed up with the better class of men. As for the claim that the canteen on the inside drives the dives from the outside, there are but 12 saloons about the Marion canteenless home, while there are 97 that besiege the Hampton home, which has put a canteen inside to banish them.

Mr. LITTLEFIELD. You say that they found saloons in Marion and they say they did not?

Mr. HARRISON. I beg your pardon.

Mr. LITTLEFIELD. That is what you read, "We found in Marion no saloons."

Mr. HARRISON. No; they stated that there were 97 that besieged the Hampton Home.

Mr. LITTLEFIELD. Are there or not that many?

Mr. HARRISON. Only 31.

Mr. LITTLEFIELD. You have been there?

Mr. HARRISON. Yes; and here is the testimony of the Soldiers' Home governor, the sworn testimony of the clerk of Phœbus, and the sworn testimony of the Commissioner of Internal Revenue, and the statements of the mayor of the town of Phœbus.

Mr. LITTLEFIELD. That is where the Hampton Home is situated?

Mr. HARRISON. Yes.

Mr. PALMER. Where is this place?

Mr. HARRISON. Hampton, Va.

Mr. PALMER. This is the statement of Mrs. Ella M. Thatcher?

Mr. HARRISON. Yes, sir; and the Rev. Dr. Crafts and others. You are knocking me out of the continuity of my statement, but we can get there just the same. On page 9, last paragraph, and page 10, first paragraph, of Exhibit D, you will find the following testimony:

We are told that the saloon inside prevents the men from going outside. I said to the late Governor Woodfin about two years ago:

"You tell me that the saloon inside prevents the men from going outside? When the saloon was put inside there were six saloons outside at Phœbus; now there are 97. How is it that all these saloons have accumulated outside if the saloon inside prevents the men from going outside?" He shrugged his shoulders and said: "Oh, that is a conundrum. Do not ask me." Phœbus, where these 97 saloons are located, has 1,200 inhabitants.

Now, gentlemen, if you will permit me, please, to return to the continuity—or do you desire me to demonstrate these things and eliminate that?

Mr. LITTLEFIELD. Proceed in your own way.

The CHAIRMAN. Take your own way.

Mr. HARRISON. Thank you. Here is the affidavit of the clerks.

Mr. LITTLEFIELD. When were you at Phœbus?

Mr. HARRISON. I have been there thirty or forty times in my life.

Mr. LITTLEFIELD. This relates to two years ago.

Mr. HARRISON. 1900. The clerk certifies in the year 1900 there were 47 licenses granted; in the year 1901 there were 45 granted; in 1902, 37 retail liquor licenses; in 1903 there were 31 retail liquor licenses granted.

Mr. LITTLEFIELD. Do you want us to understand that that is conclusive evidence of the number of saloons?

Mr. HARRISON. Yes, sir.

Mr. LITTLEFIELD. I should think not. How many were there unlicensed in that vicinity?

Mr. HARRISON. None.

Mr. LITTLEFIELD. None unlicensed?

Mr. PALMER. You mean there were no places selling without a license?

Mr. HARRISON. Hardly, in the State of Virginia, where the law is so strict and positive.

Mr. LITTLEFIELD. I can say that I have found the contrary to be the fact across the river here in Virginia. That may be, however, a fact that is not a fact from your point of view.

Mr. HENRY. It seems to me 31 would be enough for a town of 1,200 people.

Mr. CLAYTON. Ninety-seven may have been a slight exaggeration of the truth.

Mr. SMITH, of Kentucky. Oh, she just missed it by 60.

Mr. DINWIDDIE. I would like to ask if any misstatement of fact has been found in any document with which our name has been identified. We have been very careful during the past four years, and we would be very glad to have it brought to our attention if the Anti-Saloon League has been identified with any misstatement of fact.

Mr. CRAFTS. May I, in behalf of the Reform Bureau—

The CHAIRMAN. I think you had better wait.

Mr. CRAFTS. I simply want to ask for specific statement. My impression is that that is a misprint. I was at the hearing. I would not state it positively as to what Mrs. Thatcher's statement was.

Mr. HARRISON. This is simply one statement, and it is possibly the least.

Mr. LITTLEFIELD. Take the next in degree, then.

Mr. HARRISON. If you will allow me to continue—

Mr. LITTLEFIELD. Certainly.

Mr. HARRISON. I can demonstrate that my claims are well grounded.

On page 25, Exhibit D, under the caption, "Additional statement of Rev. Wilbur F. Crafts, Ph. D.," twelfth and thirteenth paragraphs, and on the second page in the pamphlet, Exhibit E, fourth and fifth paragraphs, you will note the following testimony.

Mr. CLAYTON. But I have not got that here.

Mr. HARRISON. It is a reproduction, or very nearly a reproduction, of Exhibit D, on which the map occurs—the supposed map—on page 6.

Mr. LITTLEFIELD. What is it on page 25?

Mr. HARRISON (reading):

One aspect of the canteen in soldiers' homes has not been sufficiently emphasized, namely, that idleness and a credit system of checks, both evils themselves, greatly foster the larger evil of almost constant tippling.

The old soldier can get a hundred credit checks, representing 5 cents apiece, to be paid for out of the pension money not yet received. He can not buy anything but beer with them, so that the debt habit as well as the drink habit is encouraged.

Mr. LITTLEFIELD. What is there about that?

Mr. HARRISON. I desire to present, in refutation of this statement, the following letter from Mr. Beeson, the acting governor of that Home.

Mr. HENRY. That was Mr. Crafts's statement you were reading from?

Mr. HARRISON. Yes; I quoted from the testimony of Mr. Crafts.

Mr. LITTLEFIELD. This is a statement that refers to soldiers' homes, generally. Now, what is it you present to show that the general statement is not true?

Mr. HARRISON. The testimony of the commandants of the various

Homes throughout the country, and the fact that no credit system exists. Further, that there is no chance at all for the old soldier to get credit and pay for this beer out of the pension money not yet received. The law of the United States Government prohibits the pawning of pension money. There is probably no asset to-day that is so thoroughly protected as the asset of the pension of the old soldier.

Mr. LITTLEFIELD. This is not a charge that the pension is transferred to anybody.

Mr. HARRISON. Possibly not.

Mr. LITTLEFIELD. No possibility about it—clearly not. There is no such suggestion. What is your first certificate that you have from somebody that shows that that statement is false?

Mr. HARRISON (reading):

(Central Branch, National Home for Disabled Volunteer Soldiers. Governor, Col. J. B. Thomas.)

NATIONAL MILITARY HOME, OHIO, February 24, 1904.

Maj. DUNCAN B. HARRISON,
713 Colorado Building, Washington, D. C.

DEAR SIR: I have received yours of the 20th instant in relation to statements made before Senate Committee United States Senate, about sale of beer at this Central Branch N. H. D. V. S., and in replying will take up the statements in the order given. First statement: "I said to the guard: 'How many drinks may they have?' (of beer). He said: 'Just as many as they call for and have the money to pay for.'" This statement is very misleading, as unlimited permission to purchase beer is allowed only to those members who are careful not to take more than they can carry. Many members are debarred entirely from the beer hall, and others are restricted as to the number of glasses they can have in any one day.

Second statement: "I said, 'If they have not the money to pay for them, what then?' He said: 'We give them checks; then it is taken out of the pension money.'"

Third statement: The "soldier can get a hundred credit checks representing 5 cents apiece, to be paid out of pension money not yet received. He can not buy anything but beer with them, so that the debt habit, as well as the drink habit, is encouraged."

Both of these statements are absolutely false. The only checks in use in this Branch are sold at the beer hall by the cashier for cash only, and only checks are accepted for beer. These checks can be used in the purchase of beer, sandwiches, and cigars that are sold in the beer hall, but can not be used outside of the beer hall.

The statement that either the debt or the drink habit is encouraged is not only false, but apparently maliciously false.

You are at liberty to use any statements contained in this letter in any way you may think best for the interest of the National Home. Your letter of 22d instant was received this morning, and I inclose herewith ten copies of each of the papers in relation to sale of beer, to which you refer.

Very respectfully,

J. B. THOMAS, Governor.

That is the Dayton, Ohio, Home, where they claim these scenes were enacted.

Mr. LITTLEFIELD. The document does not claim that, but probably that is your view of it. The document is a general statement.

Mr. HARRISON. That is Mr. Baily's statement that I quoted, gentlemen.

Mr. LITTLEFIELD (after examination of one of the exhibits referred to). This does not relate to that at all.

Mr. HARRISON (reading):

I have received yours of the 20th instant in relation to statements made before the Senate committee about the sale of beer at this central branch. * * * This statement is very misleading.

Mr. LITTLEFIELD. But this letter does not come from the guard who is alleged to have made that statement. You can not contradict the man that made that statement by the statement of the governor of the Home.

Mr. HARRISON. But they made that statement as coming from the guard, and there is no such condition there.

Mr. LITTLEFIELD. That is your statement, but where is the proof? Startle us with it!

Mr. HARRISON. I will, eventually. There is another letter:

(Central Branch National Home for Disabled Volunteer Soldiers. Governor, Col. J. B. Thomas.)

NATIONAL MILITARY HOME, OHIO, February 26, 1904.

Referring to the statements made by Col. J. B. Thomas, governor of this Central Branch, N. H. D. V. S., in his letter to you of the 24th instant, in answer to certain statements made before a committee of the United States Senate relative to the sale of beer at this Branch, we, the undersigned officers of said Branch, desire to express our hearty concurrence in the governor's statements in said letter.

Very respectfully,

A. J. CLARK, *Treasurer.*
 D. C. HUFFMAN, *Surgeon.*
 W. H. ORTS, *Quartermaster.*
 JOHN W. BYRON, *Commissary of Subsistence.*
 CARL BERLIN, *Assistant Adjutant-General.*
 A. S. GALBRAITH, *Inspector.*
 H. A. McDONALD, *Chaplain.*
 REV. B. F. KUHLMAN, D.D., *Chaplain.*

Mr. LITTLEFIELD. Where is that from, Dayton?

Mr. HARRISON. Yes, sir.

Mr. DINWIDDIE. Mr. Chairman, I feel I should make one request without interfering with the proceedings. I have not been able to get at the fact whether the statements of Mr. Baily have been successfully impugned. Mr. Baily is not here, and on account of his absence I want to say that I happen to know that Joshua M. Baily is one of the most reputable citizens of Pennsylvania, and has been known as such for several decades.

He is one of the large merchants of that city, and is a man whose word goes everywhere in the city of Philadelphia, and among the Society of Friends, and the people who know him generally. If it has come to the point where there is any seeming impugning of that statement of Mr. Baily I would like to be informed, so I can bring it to his attention. Mr. Baily is not here, or of course I would not make this statement.

Mr. HARRISON. These statements that are made here as to the interrogation of the guard are by Mrs. Thatcher, repeated by Doctor Crafts, and these positive, absolute statements by Mr. Crafts and Mrs. Thatcher Mr. Baily absolutely contradicts and flatly proves to be false in every particular, and contained in this statement. If you will allow me, please, to continue in sequence we will get along much faster, and I think I will be able to make myself and my case clear.

Mr. CLAYTON. I think in justice to Mr. Harrison, inasmuch as we have catechised him so much, we ought to give him any reasonable time he desires. I want to be shocked if he has that sort of evidence.

Mr. HENRY. Yes; we ought to let him proceed.

The CHAIRMAN. Yes.

Mr. HARRISON. Thank you, gentlemen. Here is a letter from the governor of the Home at Hampton.

(Southern Branch, National Home for Disabled Volunteer Soldiers. Governor, Col. Wm. Thompson.)

NATIONAL SOLDIERS' HOME,
ELIZABETH CITY COUNTY, VA., February 23, 1904.

Maj. DUNCAN B. HARRISON,

Room 718, Colorado Building, Washington, D. C.

DEAR SIR: I have to acknowledge receipt of your letter of the 20th instant in reply to mine of the 10th, and I must say that my blood boils with indignation at the absolutely false statements made by people who profess to labor in a good cause.

Statement No. 1. When the saloon was put inside there were 6 saloons outside at Phoebus. Now there are 97. Phoebus, where these 97 saloons are located, has 1,200 inhabitants.

Answer. When beer was first sold in the Home there were about 500 members in the Home, and there was no town of Phoebus except the 6 saloons mentioned, together with a half dozen dwellings and a grocery store. At present Phoebus has a population of 2,000, and the Home has nearly 2,900 members present.

Statement No. 2. "I said to the guard, 'How many drinks may they have?' He said 'Just as many as they call for and have the money to pay for.' I said, 'If they have not the money to pay for them, what then?' He said, 'We give them checks, then it is taken out of their pension money.'"

Answer. It is not known by me that any Home, at any time, ever allowed its members to drink all the beer they could pay for; that no such loose method was ever practiced at this Branch. There was a system of giving credit in vogue at this Branch some twenty-five years ago, but it is absolutely false and malicious to represent that any such custom has prevailed here since. As to the issuing of checks and charging to future pensions, no credit of any kind can be obtained at this Branch for anything whatever.

Statement No. 3. "The old soldier can get a hundred credit checks, representing 5 cents apiece, to be paid out of the pension money not yet received. He can not buy anything but beer with them, so the debt habit, as well as the drink habit, is encouraged."

Answer. Words fail me to express my indignation that so reckless a falsehood should not only be put forth, but actually sworn to.

I desire to say that the temperance people, in making comparisons between this and the Marion Branch, have not stated the case fairly, as the Fort Monroe garrison numbers at least 700 men, to whom the saloons of Phoebus are almost as close as they are to this home; besides which, there is a large number of merchant sailors, to say nothing of the men of the Navy, constantly present in Phoebus, and yet there are but 31 saloons.

Inasmuch as there are nearly 2,900 members "present" at this Branch, and 1,853 "present" at the Marion Branch, which said Branch is protected with a State law prohibiting saloons within 1 mile of the Home, it is not a very happy comparison to hold this Branch up as a horrible example of the influence of the canteen upon conditions outside of the Home—Marion being located by the side of a very quiet inland city.

As showing how far the canteen affects the morality of the Home, I will make this statement: That in the summer of 1899 an epidemic of yellow fever broke out in the Home—the Home was quarantined with a guard armed with shot guns, from the 29th day of July to the 10th day of September—a period of six weeks, during which there was not a single arrest among all the nearly 3,000 members then present for drunkenness, for fighting, or for any misdemeanor whatsoever; and that there has been no corresponding period within ten years when the arrests for these offenses have not amounted to 200; and also, more beer was then sold in the Home than in any corresponding period of that year.

I have no doubt that the real, practical, temperance people will be rejoiced to learn these facts.

Very respectfully,

W.M. THOMPSON, Governor.

Mr. LITTLEFIELD. Now, repeat the statement in that letter where he denies that checks were delivered on credit. I did not get that exactly. Please look over the letter and see that.

Mr. HARRISON. Statement 3. "The old soldier can get a hundred credit checks, representing 5 cents apiece, to be paid out of the pension money not yet received. He can not buy anything but beer with them, so the debt habit, as well as the drink habit, is encouraged."

The answer to that is: "Words fail me to express my indignation that so reckless a falsehood should not only be put forth, but actually sworn to."

Mr. PALMER. That first statement is quoted from Doctor Crafts?

Mr. HARRISON. Yes.

Mr. LITTLEFIELD. The letter quotes the statements which you have quoted, and then makes reply?

Mr. HARRISON. Yes; the governor makes specific answers to each statement made.

Mr. LITTLEFIELD. Do you understand that his assertion—the answer of the governor of that Home—applies to all or is that answer simply applicable to statement number three?

Mr. HARRISON. I should understand that the last statement applies to the first.

Mr. LITTLEFIELD. He goes on then to specifically answer some of the other propositions, but it does not make any specific answer to the credit system statement.

Mr. CRAFTS. May I say for Mrs. Thatcher and Mr. Baily that I have simply quoted what they say; I have summed up what they have said. Mr. Baily went to every Home except one in California, and Mrs. Thatcher visited the Homes.

The CHAIRMAN. That you can explain when you reply.

Mr. HARRISON. If any further evidence is required to demonstrate the absolute untruthfulness of their testimony, I respectfully call your attention to lines 7 and 8, page 16, Exhibit D, under the caption: "Statement of Mr. Joshua L. Baily," their own witness, who has been so praised for his integrity by Doctor Dinwiddie, which reads:

The sales are for cash only; no one can buy for credit.

That contradicts Mr. Crafts and Mrs. Thatcher's statement.

Mr. LITTLEFIELD. That is his statement in relation to Hampton, Va.

Mr. HARRISON. Both Mrs. Thatcher's statement and Dr. Crafts' statement were in relation to the Dayton Home, which you will find on page 9, seventh paragraph [reading]:

I said to the guard, "How many drinks may they have?" He said, "Just as many as they call for and have the money to pay for." I said, "If they have not the money to pay for it, what then?" He said, "We give them checks; then it is taken out of their pension money."

Now, the second statement of Mr. Baily, part of the third paragraph, page 17, Exhibit D, reads:

I found, under special appointment of the governor, a man on guard—

That is apparently the same man on guard that answered the question of Mr. Crafts and Mrs. Thatcher—

who had a list or roll of the names of all of those who on account of drunkenness were either limited as to the number of glasses of beer they might have or were totally prohibited, and it was made his duty to see that his limitations or prohibitions were strictly observed. But I learned from him that excepting as to these (the number of whom was not great) there was no restriction so long as a man was not disorderly, and gave no visible token of being intoxicated he was permitted to have all he was able to pay for.

I also call attention to the third paragraph on page 18, Exhibit "D," last two lines, as follows:

"Won't you sell them beer on credit?" I asked. "Oh, no; we are not allowed to sell except for cash."

Also the last three lines:

They paid their money to the cashier, who gave to each a ticket of the value of 5 cents, which they handed to one or other of the bartenders, and each getting his mug of beer passed on to the other end of the building and outside.

Also the fifteenth and sixteenth lines in third paragraph, page 19, Exhibit "D," same witness, which read:

There is practically no restriction as to the quantity, so long as they can pay for it and not become so intoxicated as to be disorderly.

Thus you will see, Mr. Chairman and gentlemen, out of their own mouths they are convicted and proven to be falsifiers.

There never was a credit-check system at any of these Homes since the year 1892, over twelve years ago, and that check system existed only in one Home, and that was the Northwestern Home in Milwaukee County, Wis.

The debt habit was not only discouraged, but has not existed since that period, and the statements of these so-termed "reform" associations were made before the Senate Committee on Immigration in 1902, and they state in their testimony that their experiences at these Homes were had within a few brief months, even days preceding the giving of said testimony before the Committee on Immigration of April 23, 1902.

The drink habit which these witnesses, officers of these associations, stated existed during the period of 1902, and which they claim was encouraged, has by the testimony of the governors of the various Homes, and their own witness, Mr. Joshua L. Baily, been proven to be manufactured statements out of whole cloth.

The drink habit has always been properly supervised and restricted by the sterling gentlemen and their fellow-officers who have the conduct of these Homes in their safe-keeping.

The drunkenness which they state existed, and according to their representation was almost perpetual, existed only in their own elastic and inflamed imaginations.

The pensions of our veterans, as you gentlemen know, and as I know, are protected more amply by our laws than any other asset owned by man.

Pensions, as we all know, are exempt from attachment, can not be levied on, and it is unlawful to anticipate them.

According to our laws the officers of the Home and the veterans themselves would be violators of the law if they attempted to pawn their pension vouchers, yet these associations and their officers have, through millions of pamphlets, misrepresentations, and downright falsehoods, striven to make the public believe, and you, gentlemen, believe, that the officers and gentlemen conducting these Homes and the old veterans of our country countenance violations of the law.

Mr. Chairman and gentlemen, is it not a sad commentary that these associations and their officers will unblushingly manufacture such fearful distortions of the truth and slander the decrepit battle-scarred veterans of all the wars of our country in order to achieve results

which they seek to redound to their own self-aggrandizement and self-emolument.

Yet, gentlemen, these are only two specimens of the millions of pamphlets which they are, according to their own statement, distributing broadcast "in every city, village, and borough of the United States and every foreign land," in order to influence legislation, deceive Congress, and "crowd" the Hepburn Bill through.

Mr. Chairman and gentlemen, you will note the difference in the actual number of saloons which really exist at Phoebus, 31, and that they testify existed, 97, is precisely 66, an exaggeration of just 207 percent; but that is not a very great exaggeration for these associations and their officers to make, as I will demonstrate to you.

I beg to call your attention to the map contained on page 6 of Exhibit D and the front page of Exhibit E. This map is supposed to be a reproduction of the Soldiers' Home, termed the Northwestern Home, in the suburbs of Milwaukee, Wis. You will note how carefully these two exhibits, issued by these associations and their officers, are skeletonized, and I appeal to your judgment that you, gentlemen, or any man or woman in the land, would naturally conclude from their maps in these exhibits that the entirety of the environments surrounding the Milwaukee Home consisted of nothing but saloons, and that the rest of the territory was vacant ground.

You will note that the map exhibited in evidence on page 6, Exhibit D, shows 51 saloons within a half-mile radius of the Home, but its reproduction in Exhibit E, of which "millions have been distributed to crowd the Hepburn bill through," shows 53 saloons.

This is only an increase of 4 per cent on those millions of distributed maps, and 4 per cent is a trifling matter, still we are all seeking for 4 per cent on our investments, and are inclined, naturally, to regard 4 per cent as a serious proposition, particularly when involving an industry of the magnitude of the brewers', and the happiness, welfare, and creature comforts of the men who fought the wars of our country, besides 4 per cent in saloons would represent an investment of many thousands of dollars.

Yet this proven misrepresentation has been circulated among the millions of other false and misleading propaganda to influence legislation and "crowd the Hepburn bill through" and take the post exchange away from the Soldiers' Homes, and drive the veterans to seek the dens of infamy which these associations state surround those institutions.

Allow me to call your attention to the language accompanying this map, given as evidence before the Senate Committee on Immigration, and printed on page 5, last paragraph, Exhibit D, and third paragraph, second page, Exhibit E.

Instead of a beer canteen keeping evil places away from the Soldiers' Homes, saloons and dives gather like a besieging host about the Homes, as shown in our diagram of the Milwaukee's Home environment, which could be duplicated from every Home with a canteen. The Home that has the fewest outside dives is the one at Marion, Ind., which has no canteen.

You will note on these maps that none of these alleged extend beyond a distance of more than four blocks from the said soldiers' home. Ergo, they are unquestionably within the distance of half a mile from the Home.

I beg to submit this extract from a letter of Col. Cornelius Wheeler, governor of said Home.

The balance of the letter does not concern this particular bill.

NATIONAL HOME, MILWAUKEE COUNTY, WIS.,
February 18, 1904.

Maj. DUNCAN B. HARRISON,
713, 714 Colorado Building, Washington, D. C.

SIR: Replying to your letter of the 14th, I have to say that there are 41 saloons within one-half mile of these Home grounds.

Yours, truly,

CORNELIUS WHEELER, *Governor.*

You will note, Mr. Chairman and gentlemen, that there is a little discrepancy in the statements of these associations with the true facts vouchsafed by the sterling governor of the Home, Col. Cornelius Wheeler, whose reputation for veracity and integrity no one dare question.

Just a difference of ten saloons as per map contained in Exhibit D, and twelve saloons as per map contained in Exhibit B—20 and 24 per cent—but that is a mere trifle with these Christian reform associations and their officers.

Allow me to present in evidence this letter from the very honorable Rudolf Brand, formerly president of the United States Brewing Association of America, now president of the United States Brewing Company of Chicago:

FIRST NATIONAL BANK BUILDING,
Chicago, February 16, 1904.

DUNCAN B. HARRISON, Esq.,
Washington, D. C.

DEAR Mr. HARRISON: In response to your request I have carefully investigated the saloon situation in the vicinity of Soldiers' Home in Milwaukee.

I find that, approximately, fifty saloons are located near the Home, but about seven blocks west of the Home the Allis-Chalmers shops, the largest engine works in the United States, employing 3,800 men, is located. Northeast of the Home, only one-quarter of a mile away from it, are located the main shops of the C., M. & St. P. Rwy., employing 5,000 men. Adjoining the Home are the largest stone quarries of the State of Wisconsin, employing a great number of men. Five or six other large industrial establishments are directly west of the Home. National avenue, the main thoroughfare on the south side of Milwaukee, on which most of the saloons are located, is almost exclusively used by these workmen in going to and from work; also by the great number of people visiting the Home daily. If these saloons would be dependent on the patronage of the inmates of the Soldiers' Home alone, they could certainly not exist, and I am sure that nine-tenths of them at least would have to go out of business.

Truly yours,

RUDOLF BRAND.

Let me present for your consideration a correct map of the Soldiers' Home in Milwaukee, Wis., showing its exact location and its true environment:

And inasmuch Mr. Chairman and gentlemen as the false maps shown in Exhibits "D" and "E" have been circulated by the millions "in every city, village, and borough of the United States and every foreign land" to deceive the people, to deceive the great Congress of our country, to influence legislation, to "Crowd" the Hepburn bill (H. R. 4072) and other measures inimical to the great brewing industry, inimical to the battle-scarred veterans of our country, inimical to mortality, decency, law, order, and truth, and that these deceptive maps have been by machinations dignified as senatorial documents, I ask most respectfully, in the name of justice, that this map, this true map, may be printed as part of the testimony before this committee, in order to in some measure undue the great wrong imposed upon us by these associations and their officers.

You will note, Mr. Chairman and gentlemen, that the correctness of this map is attested and sworn to by the following representative gentlemen, and that said attestations and affidavits form part and parcel of this exhibit:

MILWAUKEE, WIS., February 26, 1904.

To whom it may concern:

I, the undersigned, hereby certify that this map be signed for the purpose of showing the proximity of manufacturing plants and residence districts to the National Soldiers' Home, near Milwaukee, Wis., is substantially correct.

CORNELIUS WHEELER, *Governor National Home.*
BORCHERT MALTING CO.,

By ERNEST BORCHERT, *President.*

THE FALK COMPANY,

C. L. JONES, *Assistant Secretary.*

W. H. DODSWORTH, *General Agent C. M. & St. P. Ry.*

PAWLING & HARNISCHFEGER,

Per H. HARNISCHFEGER.

STATE OF WISCONSIN, *Milwaukee County, ss.*

On this 26th day of February, A. D. 1904, personally appeared before me, a notary public in and for the county of Milwaukee and State of Wisconsin, Cornelius Wheeler, Ernest Borchert, C. L. Jones, W. H. Dodsworth, and H. Harnischfeger, each personally known to me, and in my presence signed the foregoing certificate in the capacity, manner, and by the authority as shown and appearing.

[SEAL.]

EDW. F. BYRON,
Notary Public, Milwaukee County, Wis.

My notarial commission expires September 5, 1904.

Let me present this letter from Mr. Jos. E. Uihlein, vice-president of the Schlitz Brewing Company, Milwaukee:

MILWAUKEE, February 16, 1904.

DUNCAN B. HARRISON, Esq.,
Washington, D. C.

MY DEAR MR. HARRISON: Your favor bearing date of the 12th instant with inclosure was transmitted to me by Mr. Brand to-day.

It is needless for me to reply in detail because I have given Mr. Brand such information as you desire.

Mr. Crafts is certainly misrepresenting the situation when he contends that these beer halls are able to exist because of their close proximity to the Soldiers' Home. You know that we have a few breweries in Milwaukee, but you probably don't know that we have two institutions, each of which employ more men than all the breweries of Milwaukee put together, and both of these incorporations have their place of business near the Soldiers' Home, and are in fact the factors that make it possible for many beer halls to exist on National avenue. For your guidance I have marked Doctor Crafts's leaflet. The street running from "A" to "B" is National avenue, the main thoroughfare on the south side of the city of Milwaukee. "C" is where the largest plant of the Allis-Chalmers Company is located. This is the largest engine factory in the world. They built all the engines for the Metropolitan Power Station in New York, and are building machinery for the new subway. They employ 3,800 men, 90 per cent of whom walk from "B" to "A," National avenue, twice a day. They are hard-working people, and naturally drink their beer. Most of these men live within a radius of a mile from the point marked "B." There are very few houses at West Allis, marked "C," this being a new settlement. Besides the Allis-Chalmers works there are five or six other industrial plants, some of considerable magnitude. The men engaged in these plants have only one thoroughfare to town, and that is National avenue, running from "A" to "B." The street, of course, probably extends 2 miles to the east of "B." That part of Doctor Crafts's map bearing this inscription,

"Part of Milwaukee. How the 'canteen' does away with worse places," is not part of the Soldiers' Home at all, but the inscription is put in that place opposite the large number of beer halls to mislead the members on the committee who are not familiar with local conditions and the topography of that part of Milwaukee. Some of the largest factories of the city are being erected directly across the street

from the row of beer halls marked "G," and streets lead directly from that part of National avenue, that is street marked "A" - "B," to the West Milwaukee shops, which are only about three blocks from Soldiers' Home. These shops belong to the Chicago, Milwaukee and St. Paul road, and are among the largest of their kind in the United States. The St. Paul road has been building almost all of its passenger cars at this place, including such excellently equipped cars as the sleepers and diners on the famous Pioneer Limited. They are now also beginning to build their own engines. This institution employs from 5,000 to 5,500 men, and is the largest manufacturing establishment in Milwaukee. It is located at the point marked "M." This plant lies in the Menomonee Valley, and I am safe in saying that not 5 per cent of the people working at these shops live north of the factory (the district three blocks north of section marked "M" is the best residence property in Milwaukee, and is owned a well-to-do class of people, not laborers or mechanics), but all must every by night on ceasing work, and every morning on returning to work, leave the Menomonee Valley workshops and take the road direct to and through National avenue, running north and south to the point marked "G," and their only route to and from their work is through National avenue.

Point marked "G" is where Mr. Crafts has noted that there are many beer halls. I have not counted the beer halls, but know that all of them are licensed. We haven't a "blind tiger" in the whole of Milwaukee. None of these are evil resorts. They are nothing but beer halls, where an honest man can get a pint of beer for five cents and eat a quantity of free lunch if he so desires. The district directly south of "G" and "B" is a workingman's locality, covering more than a square mile. It is needless for me to have any one else in Milwaukee corroborate what I have said in re these matters. It is a matter of common knowledge to every one engaged in business in this city, that the Allis-Chalmers works and the West Milwaukee shops are the largest institutions here. The cashier of the Allis works only advised me to-day that the number of people employed by their company is approximately 3,800 men, and the superintendent of the St. Paul road stated this afternoon that 5,000 to 5,500 men are employed at their shops daily. I feel safe in saying that such an army of men would easily make it possible for a large number of beer halls to exist in any part of this country, or for that matter in any country of continental Europe.

There are also other large works where the West Milwaukee shops are located, among them the Falk Manufacturing Company. You, of course, understand that all these people employed in these plants must come to National avenue, either when they go to or come from work. The beer halls, inclosed in the circle marked "S," are almost entirely kept alive by the West Milwaukee shops and the men working in the stone quarries marked E. The stone quarries are among the largest in this part of the country and employ a large number of men, principally foreigners, who are known to consume considerable quantities of beer. The Home happens to be located in that part of the city, but I am advised by our south side manager, who has been with us over twenty-five years and who gets into this territory quite often, that very many of these beer halls are never frequented by a single soldier, but are simply frequented by the huge army of workmen who are engaged in that part of the city. If any of your friends desire further information as to the proximity of these plants to Soldiers' Home they can easily obtain it.

Yours, very truly,

Jos. E. UIHLEIN.

And this additional letter from J. E. Uihlein, president of the Northern Refrigerator Transit Company:

MILWAUKEE, WIS., February 26, 1904.

DUNCAN B. HARRISON, Esq.,
Washington, D. C.

MY DEAR MR. HARRISON: I have inclosed herewith, as per your request, a map of the territory surrounding the Soldiers' Home at Milwaukee. The proximity to the Home of the various large factories has been noted on the map, and so that the committee will be satisfied that the map is substantially correct, I have had the following affix their signatures to a statement on the map: Cornelius Wheeler, governor of the National Home; Borchert Malting Company, by Ernest Borchert, president; The Falk Manufacturing Company, by C. Jones, assistant secretary; Chicago, Milwaukee and St. Paul Railway, by W. H. Dodsworth, general agent; Pawling & Harnischfeger, by Henry Harnischfeger. Neither the general manager nor the general superintendent of the Allis-Chalmers Works was in his office this morning, and in that you gave us such short notice, I was obliged to send you the map without their signatures.

I have also included herewith letters from Pawling & Harnischfeger, the Falk Manufacturing Company, and one from the assistant general superintendent of the St. Paul

road showing that they alone employ approximately 5,000 men. You will observe that their plant is only 1,200 feet from the Home grounds. You will also observe that all men working at the shops must walk south to National avenue in order to get to their homes from the shops. The district north of the shops is a fine residence locality. The map serves to show you that the largest institutions of Milwaukee are located in close proximity to the Home, and shows conclusively that the majority of the saloons necessarily derive their existence from the patronage of these men going to and from their work.

I don't remember what Mr. Crafts's map looked like as to exact location of saloons, but I will say to you now that there isn't a single saloon on National avenue directly across the street from the Home grounds. I believe Mr. Crafts's map shows some saloons about there. Whether his map indicates saloons at that place or not is immaterial, but the fact is relevant that there isn't a single saloon on National avenue directly south of the Home.

If I had a week's time I could get every manufacturer in that locality to testify to the close proximity of their plants to the Soldiers' Home, but in that you asked for the data by Monday, I was obliged to cut out many of the smaller manufacturers, some of whom, however, employ hundreds of men. You will observe that I did not get signatures from the Milwaukee Electric Company, the stone quarries and other institutions of considerable magnitude about the Home. I have given you letters, however, from the principal plants, which should suffice to entirely disapprove the statement of Mr. Crafts that these saloons derive their existence from the soldiers, which, of course, is a base misrepresentation and a downright lie, and which the testimony of the assistant general superintendent of the St. Paul road, and the other gentlemen who have appended their names to the maps, shows beyond a question of doubt.

The map of Mr. Crafts is misleading in the extreme, and anyone who would dare to impose upon a Congressional committee, with what I term doctored evidence, is insulting the very body from whom he requests a hearing. If a person were guilty of perjury in a court at law he couldn't possibly misrepresent the facts of a case more grossly than the leaflet (map) you sent me does of the question before us.

With kindest regards to you, I remain,

Very truly, yours,

J. E. UIHLEIN.

This affidavit from Mr. W. B. Earling, assistant general superintendent of the Chicago, Milwaukee and St. Paul Railway Company, as to the number of men employed in their shops:

CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY,
Milwaukee, February 26, 1904.

To whom it may concern:

The Chicago, Milwaukee and St. Paul Railway Company's West Milwaukee shops are located in close proximity to the National Home for D. V. S., and the avenues of approach to National avenue are about as shown on sketch marked Exhibit "A."

Approximately five thousand (5,000) men are employed at these shops.

Yours, truly,

W. B. EARLING,
Assistant General Superintendent.

STATE OF WISCONSIN,
Milwaukee County, ss:

On this 26th day of February, A. D. 1904, personally appeared W. B. Earling, assistant general superintendent of the Chicago, Milwaukee and St. Paul Railway Company, to me personally known, who signed the above statement in my presence.

[SEAL.]

Edw. F. BYRON,
Notary Public, Milwaukee County, Wis.

My notarial commission expires September 5, 1904.

This succeeding affidavit from Mr. C. L. Jones, assistant secretary of the Falk company, as to the number of men employed in their shops:

THE FALK COMPANY,
Milwaukee, Wis., February 26, 1904.

To whom it may concern:

The Falk company, of which I am assistant secretary, employs approximately 700 men. The shops are located near the National Soldiers' Home at Milwaukee, and

at the proximity thereto as shown on accompanying map, marked "Exhibit A," is substantially correct. The means of egress and ingress to National avenue from our shops are also substantially correct as shown.

This statement is made from my personal knowledge.

Very truly, yours,

C. L. JONES,
Assistant Secretary.

STATE OF WISCONSIN,
Milwaukee County, ss:

On this 26th day of February, A. D. 1904, personally appeared C. L. Jones, assistant secretary of the Falk company, of Milwaukee, Wis., to me personally known, who signed the foregoing statement in my presence.

[SEAL.]

EDW. F. BYRON,
Notary Public, Milwaukee County, Wis.

My notarial commission expires September 5, 1904.

This succeeding affidavit from Mr. H. Harnischfeger, of Pawling & Harnischfeger, as to the number of men employed in their shops:

PAWLING & HARNISCHFEGER,
Milwaukee, Wis., February 26, 1904.

To whom it may concern:

We hereby wish to state that our firm has purchased about 20 acres of land adjoining the Soldiers' Home grounds, as shown on the map upon which we have placed our signature. It is our intention to put up new works and extend our present lines, and as we have within the last year employed already nearly 600 men, we expect, when our new works are completed, under normal business conditions, to employ in the neighborhood of 1,000 men within the next few years.

Respectfully,

PAWLING & HARNISCHFEGER,
Per H. HARNISCHFEGER.

STATE OF WISCONSIN,
Milwaukee County, ss:

On this 26th day of February, A. D. 1904, personally appeared H. Harnischfeger, one of the members of the firm of Pawling & Harnischfeger, of Milwaukee, Wis., to me personally known, and signed the foregoing statement in my presence.

[SEAL.]

EDW. W. BYRON,
Notary Public, Milwaukee County, Wis.

My notarial commission expires September 5, 1904.

So, therefore, you see, Mr. Chairman and gentlemen, that notwithstanding the misrepresentations of the skeletonized maps shown in Exhibits D and E, and their accompanying fabrications, I now prove to you that there are the following residents and workmen in and around the Soldiers' Home in Milwaukee, Wis., and all within a half mile of said Home:

Allis & Chalmers shops	3,800
C., M. & St. Paul Railway shops	5,000
Residents northern section, about	1,900
Residents southern section, about	4,700
Falk Company	700
Harnischfeger Company	600
Allow for other residents	2,500

We have a total of 19,200

As against this total of 19,200, the total membership of the Northwestern Home for Disabled Volunteer Soldiers in the city of Milwaukee, Wis., at the end of fiscal year June 30, 1903, was, "present" 2,071, per Inspector-General's report, War Department, U. S. Army.

Less than one-ninth the number of residents and workmen around and about said Home.

It is also demonstrated that the only channel of ingress and egress to the workshops and residences of this district is through National avenue, where nearly all the saloons are supposed to be located, as shown in exhibits of maps in Exhibits D and E.

In this correct map which you have before you, you have the sworn testimony of Col. Cornelius Wheeler, Ernest Borchert, C. L. Jones, W. H. Dodsworth, and H. Harnischfeger, whose statements prove that the Rev. Wilbur F. Crafts's map and accompanying testimony in Exhibits D and E are absolutely intentionally misleading, and, to put it mildly, incorrect.

You have the further testimony of the Hon. Rudolf Brand, corroborating the statements of the other witnesses whose testimony you have heard.

You have Governor Wheeler's letter proving the statement of the number of saloons to be a falsehood to the extent of 20 and 24 per cent, as shown in the maps in Exhibits D and E.

You have the sworn testimony of Messrs. Harnischfeger, Jones, and Early as to the number of men they employ.

You have the statement of Mr. Joseph E. Uihlein as to the exact conditions surrounding the Soldiers' Home.

You have the further testimony of Mr. Joseph E. Uihlein that the saloons represented to exist on National avenue, south of the Soldiers' Home, per the maps in Exhibits D and E, as stated by the superintendent of the International Reform Bureau, do not exist at all, except in the phantomized imagination of this extremely imaginative individual.

Mr. Chairman and gentlemen, you noted unquestionably with satisfaction the manner in which all of the officers of these associations gave credit to the National Home at Marion, Ind., for its being what they termed a "canteenless" Home, and the fulsome tribute paid to the Marion Home and its management by the Rev. Dr. Wilbur F. Crafts, as contained on page 25, last paragraph, and page 26, first paragraph, of Exhibit D, and in the sixth paragraph, second page of Exhibit E, and the further tribute paid to this Home by Mrs. Ella M. Thacher, as contained in the fifth paragraph, eighth page, Exhibit D, and the first paragraph of her statement on the second page of Exhibit E, and the further praise of this Home by the other witnesses, as shown in the testimony of Exhibit E.

Let me present in evidence this letter from John Q. Adams, treasurer and acting governor of the Marion Home:

HEADQUARTERS, GOVERNOR'S OFFICE,
MARION BRANCH, NATIONAL HOME FOR D. V. S.,
February 17, 1904.

Respectfully returned to Maj. Duncan B. Harrison, Washington, D. C., with the information that there are no saloons in the immediate vicinity of the Marion Branch, National Home for Disabled Volunteer Soldiers. One year ago the Indiana Legislature passed a law prohibiting the sale of intoxicating liquors within 1 mile of the Soldiers' Home. Prior to that time there were some 12 or 15 saloons just outside of the Home grounds.

JNO. Q. ADAMS,
Treasurer and Acting Governor.

You will also note the unanimity of opinion on the part of the officers and witnesses of these associations in their tribute to the splendid management of Col. George A. Steele, and Justin H. Chapman, the manager and governor of this Home, who are concededly splendid disciplinarians.

Yet, notwithstanding the advantage derived by this Home through the State law prohibiting the sale of liquors within a mile of its limits, the fact of its excellent discipline maintained by its managers, the further fact of its having no canteen, and notwithstanding the fact that it has the smallest number of inmates of any of the National Homes, it ranks fourth, fifth, and fourth, in the status of the eight National Homes in percentage of drunkenness, offenses committed through drunkenness, and punishments inflicted for said offenses, per Inspector-General's report to the War Department for the year ending June 30, 1903.

You will therefore see, Mr. Chairman and gentlemen, that the officers and witnesses of these associations have again been somewhat remiss in their statements.

EXHIBIT F.

I respectfully ask your consideration of Exhibit F, entitled "Scientific testimony on beer."

This is one of their favorite, I might say most favorite, campaign documents, or as they are pleased to call their propaganda, "moral reform arguments."

This Exhibit F used to be profusely distributed by the hundreds of thousands in the form of FF, which you will see was dignified as a Senatorial document.

But from extravagant use of its original form these associations exhausted every source from which they secured their supply of this Exhibit FF, and were forced to abandon the Public Printing Office from which they secured them at Government rates, and have them printed elsewhere under the form of Exhibit F.

The sources from which the contents of this extraordinary document were obtained are questionable, and are now being fully investigated.

For the present I ask your consideration of the fourth paragraph of first page, which reads:

Everyone bears testimony that no man can drink beer safely; that it is an injury to anyone who uses it in any quantity, and that its effect on the general health of the country has been even worse than that of whisky. The indictment they, with one accord, present against beer drinking is simply terrible.

Mr. Chairman and gentlemen, I respectfully beg your analysis of this intemperate, vicious, and untruthful statement in denunciation of beer.

Everyone bears testimony that no man can drink beer safely.

The indictment they, with one accord, present against beer drinking is simply terrible.

Who is the "everyone" who bears testimony that no man can drink beer safely?

Who are "they" who, with one accord, present such a terrible indictment against beer drinking.

There is but one answer—the self-constituted leaders of these reform associations.

Mr. Chairman and gentlemen: Prof. Louis Pasteur, one of the greatest, if not the greatest, benefactor of mankind that ever existed in this world, certainly that our generation has ever known, celebrated as a savant, philosopher, chemist, analyst, and discoverer, in the year 1870, on the conclusion of the sanguinary Franco-Prussian war devoted four

years of his remarkable life to the investigations, experiments and analyses, and fermentations of beers.

The results of his researches and investigations he expressed in three famous volumes, known under the titles of "Studies on Beer," "Experiments with Beer," and "Beers and Fermentations."

In his volume "Études sur la Bière" ("Studies on Beer,") this famous man states that the reason for his researches and investigations of beer, fermentation, and experiments, was for the sole purpose of demonstrating to his countrymen (the French) that the cause of their defeat in the Franco-Prussian war was directly attributable to their overindulgences in vinous and spirituous liquors, particularly, as he termed it, the curse of absinthe, and that the main cause of the physical superiority of the Prussian army and of the entire German nation was directly attributable to their liberal indulgences in malt liquors.

Professor Pasteur devoted a period of four years, as I before stated, in his researches and analyzations of malt liquors, and in the prefaces of his two succeeding works, "Experiments with Beer" and "Beers and Fermentations," he again voices the reasons specified above for his researches in beers for the benefit of his countrymen and mankind generally.

The results of his researches have been generally adopted by the brewers of the world, and universally adopted by the brewers of America. Hence our perfect beers, ales, and porters.

Hence the method of preservation of beers, and the elimination of impurities, known as Pasteurization of beer, whereby according to the opinions and indorsements of such eminent savants as Prof. Jno. Tyndall, Professor Graham, Lord Lister, Lord Bass, Professors Appert, Bellamy, Brefeld, Carl Oppenheimer, Emil Chr. Hansen, Eugene Boullanger, and the additional opinion of Prof. Alfred Jorgenson, director of the Royal Laboratory at Copenhagen, Herr Lemholm, and the eminent French savants Gay-Lussac, Cagniard, Latour, Jules Duval, are united in the opinion, expressed in their reviews of Professor Pasteur's methods and under their signatures, that through Professor Pasteur's eminent researches—

"Brewing has thus become a series of precise and definite operations, capable of control at every point."

"Through pasteurization the brewers have been enabled to emancipate their industry from empiricism and quackery and make their product the most wholesome of drinks and helpful of foods."

I again refer to the testimonies of the American professors and chemists, given before the pure food investigations of the United States Senate, contained in Report 516, Fifty-sixth Congress, first session, and the analytical researches of the Department of Agriculture contained in that same volume, and add them to the illustrious name of Pasteur and his brilliant associates.

I ask you, Mr. Chairman and gentlemen, to contrast them with their expert knowledge and researches with the manufactured slanders printed by these associations and their officers, as shown in Exhibits "F" and "FF".

Further comment is unnecessary.

Let me, please, digress for a moment, and quote the translation of Professor Pasteur, taken from the preface of one of his volumes:

The idea of these researches was inspired by our misfortune. I undertook them immediately after the war of 1870 and have continued them without intermission

up to the present time, with the determination to carry them far enough to mark with a permanent advance an industry in which Germany is markedly superior to us.

What will come to pass in this great industry through putting into practice the process of manufactured beer that I have deduced from my observations, and through the usefulness of the new facts upon which it is founded, I shall not have the temerity to predict the future on these questions. Time is the best appraiser of scientific work, and I do not ignore the fact that an industrial discovery rarely bears all its fruit under the hands of the first inventor.

I began my investigations at Clermont-Ferrand on the laboratory of and with the aid of Monsieur M. Duolaux, professor of chemistry at the Faculte des Sciences, of this city. I continued them at Paris, and finally in the great brewery of the Brothers Tourtel at Tantonville, beyond dispute the first in France.

It is my duty to thank publicly these intelligent manufacturers for their extreme courtesy. I owe equally a public acknowledgment to M. Kuhn, a skillful brewer of Chaalieres, near Clermont-Ferrand, as well as to M. Velten, of Marseille, and to MM. de Tassigny, of Rheims, who have put their factories and their products at my disposal with most laudable eagerness.

L. PASTEUR.

PARIS, *le 1er Juin, 1876.*

And yet, Mr. Chairman and gentlemen, these wild manufactured denunciations of the great brewing industry have been distributed by the millions "in every city, village, and borough of the United States and every foreign land" to influence legislation and "crowd" the Hepburn bill through by these wonderful analytical reform associations.

Just for one moment, Mr. Chairman and gentlemen, compare the methods of the treatment accorded the brewers of America with the manner in which they are treated in Europe.

In England their industry is represented by over 30 members in Parliament and 5 members in the House of Lords.

In Germany the brewers virtually hold the balance of power in the German Reichstag.

In Austria the same conditions prevail in the Bundesrath.

In the Chamber of Deputies of France they are strongly represented.

In every European country the brewers are accorded the respectful recognition to which their great industry, progressiveness, and eminence justly entitles them.

While in our country, where they contribute over 100 per cent great amounts to the support of the Government in ratio of taxation, and several hundred per cent great amounts to the industrial producers of the soil, and employ more people than England, Germany, Austria, and France combined, and where their invested capital excels all of these countries, they are held up to scorn and slander, to abuse, to vituperation, to misrepresentation, and their every effort impeded by vicious extremists, who openly state and advertise that their one desire is to ruin, to destroy, to obliterate the brewers and their enormous industry.

And for what reason and for what motive?

To secure sincere reform? To stamp out evil resorts, red lights, and slums? Oh, no, Mr. Chairman and gentlemen, as I have proven to you, the brewers are doing all the good work, while these so-termed reformers are only retarding.

If the correct solution of the methods of the reformers is desired, it is only necessary to examine their business methods, their luxurious headquarters, their salaries, and contributions. These, perhaps, will tell the story.

Mr. Chairman and gentlemen, do not think for one moment that I am seeking to put wings on the brewers or surround their brows with

crowns or surround them with halos. On the contrary I am only representing them as they are, a sterling lot of respectable and law-abiding citizens, proud of their country, of their achievements, and of their citizenship, and jealous of their honor and the integrity of their industry.

EXHIBIT G.

I next respectfully call your attention to Exhibit G, entitled "High license in Massachusetts, New York, and Alaska." This "reform" document, Mr. Chairman and gentlemen, is one of the favorites for distribution by these associations, and has been used very largely in influencing legislation to "crowd" the Hepburn bill through.

Its citations are remarkable in the extreme, and yet not without ludicrous features. Kindly listen to this marvelous citation:

Last year at Holyoke, Mass., I had some of my friends stationed in offices opposite six of the worst "hotels," to count the number who went there on several Sundays and some holidays, on which the sale of liquor is prohibited. The law allows these so-called hotels, which do very little legitimate business, to sell on Sundays and holidays to guests only—those who resort to their place for food or lodging—but the supreme court of Massachusetts has declared that on such days, under the law, they can only sell to guests at their meals or in their rooms. They can not sell over the bar on such days to anyone, but here are the results of counting those who went in on some of the Sundays and holidays. In not a single case in the record complete for the day, as some of my customers could not stay all evening, and others went home for dinner and supper. But here is the number counted, as they are ready to go into court and testify:

Sunday's record, March, 1901.

Hotel No. 1	143
Hotel No. 2	529
Hotel No. 3	547
Hotel No. 4	740
Hotel No. 5	924
Hotel No. 6	1,078
Total	3,961

Easter Sunday, 1901.

Hotel No. 1	434
Hotel No. 2	450
Hotel No. 3	924
Hotel No. 4	1,161
Hotel No. 5	1,308
Hotel No. 6	1,673
Total	5,950

And yet, Mr. Chairman and gentlemen, the Twelfth Census of the United States of America, in the year 1900, gives the following statistics in volume 1, page 161:

Total population of Holyoke, Mass.	45,712
Females	23,968
Males	21,744
Total	45,712

Volume 2, page 131, of the Twelfth Census of the United States of America, year 1900, states:

Total number of males of all ages, including infants, in Holyoke, Mass.	21,744
Total number of males over 20 years of age	12,201

Divided as follows:

20 to 24 years	2,075
25 to 29 years	2,077
30 to 34 years	1,804
35 to 44 years	3,006
45 to 54 years	1,818
55 to 64 years	985
65 years and over	381
Unknown ages	55

Total 12,201

In the census report in a volume entitled "Churches," on page 263, the following statistics are given:

Church edifices and organizations in Holyoke, Mass 17

Divided as follows:

Denominations—

Regular Baptist	4
Catholic	4
Congregationalists	2
Lutherans	1
Methodists	3
Presbyterians	1
Episcopalians	1
Unitarians	1

Total 17

Value of church property	\$546,976
Number of communicants	22,876
Females	15,252
Males	7,624

Total 22,876

Total number of male nonchurch communicants	4,577
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So you will see, Mr. Chairman and gentlemen that, according to the above tables, on Easter Sunday, 1901, 5,950 of the male population of Holyoke were seen to enter hotels Nos. 1, 2, 3, 4, 5, and 6 for the purpose of drinking.

And yet, according to the Weather Bureau of the U. S. Department of Agriculture, whose map and statement I herewith submit in evidence, attested by the Chief, Willis Moore, this particular Easter Sunday, 1901, was a bright pleasant day in Holyoke and its vicinity, with plenty of sunshine, naturally throngs of people in the street, and a day in which crowds could be easily detected.

The difference between 4,577 nonchurch communicants and the 5,950 who entered said hotels to drink is precisely 1,373, leaving a surplus drinking population in Holyoke, Mass., on Easter Sunday, 1901 (unaccounted for), who participated in that particular orgy on Easter Sunday, 1901, of 1,373.

Is it possible? But, no, no; I can not for a moment even suspect that any sermon would be as dry as all that.

Another glaring improbability is the statement of the number of people who pushed their way into "Hotel No. 6"—1,673. Just think of it, gentlemen, 1,673 struggling men with a "thirst"—two regiments of men—pushing into one hotel between the hours of 6 a. m. and 7 p. m. to buy drinks. For those must be the hours between which the "friends" stationed in offices opposite six of the worst "hotels" could see this crowd.

Thirteen hours, seven hundred and eighty minutes, two and one-half men to the minute, to get a drink or drinks, is what this number would equal.

Or even take a full day of twenty-four hours, beginning at midnight Saturday night, ending at midnight Sunday night, twenty-four hours, one thousand four hundred and forty minutes. Why, Mr. Chairman and gentlemen, 1,673 men standing in line from midnight Saturday to midnight Sunday night would have just about six-sevenths of a minute each to enter said hotel, proceed to the bar, call for his drink or drinks, have it concocted for him, or drawn for him, or poured for him, or opened for him (you see I am familiar with drinking terms) and drink it, receive his check, pay for his drink, receive his change, leave the barroom, and make his exit from the hotel—all in six-sevenths of a minute.

One continuous stream of men, a struggling mass of men, a veritable mob of men, in and out of this one hotel, and all on Easter Sunday; or, as these associations would call the hotel, a "speak-easy place," a "blind-tiger place," in which men would strive to evade attracting attention of the officers of the law, and as it states in this pamphlet, Exhibit G.

Under the laws of the supreme court of Massachusetts they can not sell over the bar on Sunday to anyone.

One thousand six hundred and seventy-three men, gentlemen, in this one hotel. What a blessing it was that the friends who counted for these associations "could not remain all evening and others of the counters went home for dinner and supper."

If they could have remained the entire day they would have probably counted the entirety of the population of Holyoke, Mass., as drunkards and lawbreakers, irrespective of church affiliations and regardless of age, sex, color, and condition.

You will note, however, Mr. Chairman and gentlemen, how carefully these associations refrain from mention in their document, Exhibit G, the disposition of the case against this particular hotel. Also, how carefully they refrain from mentioning the name of the hotel, in order to cover up, to conceal, a tracing the facts concerning this alleged case.

They also refrain from stating the names of the other hotels against which they brought charges of lawbreaking.

The jury, however, acquitted this hotel, the Marble Hall. The case was laughed out of court as ridiculous, preposterous, and the charges against the other five hotels were dismissed for lack of evidence.

I offer this letter from his honor the mayor of Holyoke, Mr. Chapin, in corroboration of my statement.

Seriously, Mr. Chairman and gentlemen, and very seriously, I call your attention to the fact that this is one of the many documents, this Exhibit G, which these reform associations are spreading broadcast, as they state, "in every city, village, and borough of the United States and every foreign land," for the purpose of inflaming the minds of the people and influencing legislation, securing petitions and petitioners, and, as they further state, to use such methods to "crowd" the Hepburn bill through.

Mr. Chairman and gentlemen, this Exhibit G and the other pamphlets which I have presented in evidence for your consideration are so pitiful, yet so monstrous in their distortions of facts and truths, and so vicious in their design and deception, and yet withal to the

thinking man so transparent, that it is a sad commentary that they should receive any consideration from anybody; and yet the millions of petitioners and petitions which you gentlemen receive to influence you in your attitude toward public measures are secured through these pitifully libelous exhibits which I have presented before you to-day. Oh, the pity of it all! To think that they emanate from people whose calling is supposed and believed to deprecate untruths and misstatements, and whose garb, as followers in the service of Him who preached the Sermon on the Mount, secures for them, as it naturally should and ought to, special consideration and courtesy; and yet I am compelled regretfully to state that every special courtesy and consideration has been abused. Every charity that you gentlemen of the House of Congress and of the Senate of the United States have tendered to these associations and to their officers have been taken advantage of. Their warmest advocate can not asperse the proofs which I have presented for your consideration. Their most lenient critic can not but concede that they are condemned, and mainly out of their own mouths.

The old proverb, to give the inch and to take the ell, has in their actions been most amply exemplified.

The industry which I represent and I, myself, would ordinarily concede that the motives of people of their cloth were not to be impugned.

I can readily understand, therefore, that when one of the officers of these associations would approach you gentlemen and make a statement that you would naturally credit them with telling the full truth, and hence the glaring impositions which have been practiced on you are demonstrated by the fact that the majority of these exhibits have been dignified by being presented to the Houses of Congress and thereby receiving the titles of Government documents.

Therefore, you can appreciate most readily how these associations and their officers have made their misstatements a two-edged blade cutting both ways, and with their badge of office as a sheath imposing upon Congress by misrepresentations and deliberate falsehoods, and deceiving their sincere followers by making them believe that they have the indorsement of Congress, and are in vogue and en rapport with Representatives and Senators, by forwarding to their followers the governmental documents whose introduction they have secured by methods that will not bear investigation, delivered in franked envelopes secured from Representatives and Senators who believe in their sincerity and integrity, and who are themselves devout followers in the cause which these associations and their officers blaspheme.

Mr. Chairman and gentlemen, it is but natural to suppose that, after all the consideration, courtesies, and generosities that these associations and their officers have received at the hands of the Congress of the United States of America, gratitude would be the very keynote of their attitude in reciprocation for the favors received.

But such is not the case. Gratitude does not form one infinitesimal atom in their grasping efforts to attain their desires. Their foundation stone is self-glorification; the capstone, self-emolument. And the same voices that will be raised to-day in supplication, in argument, and in pleading, will be used to-morrow to flay and lash with scorn and vituperation.

In proof of which, I present for your consideration—

EXHIBIT H.

Entitled: "Moral Victories Won and Waiting," and under the caption of this exhibit, first page, "Moral Reform Only a Side Dish in Congress," occurs this statement:

"Our victories are mostly in amendments, the former strategic use of the side door." "Congress will generally vote right when it has to vote—let us be thankful for that—and so when a germane amendment in the interest of morals can be attached to some political or financial or military measure it usually passes." It was by such a flank movement we carried the divorce law, the Sabbath closing, the first and second anticanter laws.

The percentage of time given by Congress to morals is infinitesimal. It is not the turkey in the legislative feast, as it should be, but only a side dish. The Senate has no committee on morals. The House only one, the last and least of all, the Committee on the Alcoholic Liquor Traffic, made up mostly of new men who could not get on any other committee. A former chairman of the committee said he would "rather be the tail end of the Appropriations Committee," he "would walk to New York to get that promotion." Moral reform is treated about Congress as a distant poor relation of politics that can not be wholly ignored—must have a crumb and a word now and then.

And this is the Moral Reform Association's estimate of this committee, and the House of Representatives, and the Senate of the United States of America, at whose hands they have received so many, so very many considerations.

And this is their slur at the Congress of whom that splendid type of American gentleman, Representative Shafroth, only a few days ago declared to be "the greatest legislative body in the world."

Mr. Chairman and gentlemen, I marvel, I wonder how these associations and their officers dare persist in seeking the Congress of this great country, which they publicly deprecate, to solicit their assistance.

Mr. Chairman and gentlemen, it is time to call a halt. It is time the "reformers" were reformed. There are no virtues in their methods, only methods in their madness, for on the subject of drink they are mad, and use no reason, no judgment. They are not big enough or broad enough to analyze and reason. They move in one narrow rut, but seek an outlet through one narrow channel. Their minds have dwelt so persistently, so constantly on the one subject that they can not see beyond it. Their grasping desires to secure a point, to attain an object has narrowed their minds into almost nothingness, and to attain their end, as it has been demonstrated to you by these exhibits and by the testimony which I have presented, they will connive, manufacture, slander, and descend to almost any depth in order to destroy. They appear to be, and I liken them unto the professional hunter, who stealthily advances, dodges in and out, hides, and snares, and lures, and then destroys. They do not reason that it is not the drink that is to blame, but the weakness of the individual who carries it to excess. Based on their principles they should advocate the banishment of cutlery because some poor, maddened people use knives with murderous intent.

Again, on the same principles that they advocate, they should precipitate a crusade against firearms, because other unfortunates are invested with homicidal tendencies.

But they do not do this; they use no reason, but concentrate their attention, their antagonism, and condemnation on the material, when you and I, and all who think, know that it is the man who is to blame and not the object.

But it suits their purpose to decry beer, for by their machinations and adroitness and fabrications and abuse of confidence, they have made it a popular subject of denunciation with a certain cabal with whom they have surrounded themselves.

Besides, they have made it profitable. It is their means of livelihood and sustenance, and a very good vehicle it has proven to be, as their luxurious homes, well-equipped headquarters, and fat contributions testify. Hence, the method in their madness.

I now present for your consideration Exhibits A and AA—two petitions—signed.

I first call your attention to the fact that both of these petitions emanate from the Women's Christian Temperance Union Association, and are both signed by Mrs. Margaret Dye Ellis, who, I believe, is the legislative superintendent of said association.

I also respectfully request your notation of the fact that, while Exhibit A is captioned "Petition to United States Senate," and petition AA is captioned "Petition to the United States House of Representatives," still they both specifically state that they are petitions "For the passage of the Hepburn-Dolliver bill, H. R. 4072, S. 1390, at the earliest possible date."

Probably every one of you gentlemen have received hundreds of these petitions from your various constituents and from all sections of the country, but you probably have none of you received any of these petitions with the footnote attached thereto.

I would ask you to note the language of this footnote. For instance, the title of the footnote in glaring capitals: "Read carefully and tear off before returning."

Why should they want this footnote torn off, gentlemen, if they are honest? Why should they want it destroyed if they are sincere? Why should they want to hide from you, gentlemen of this Congress, the methods through which they secure their petitioners to sign these petitions with which they flood the two Houses of Congress of the United States, if those methods which they pursue were honorable? Therefore, why should they want this footnote "torn off before returning petition?"

For several reasons: First. They do not want disclosed to you gentlemen the source through which Congress invariably receives a flood of petitions on all bills pertaining to legislation antagonistic to beer.

Second. If their modus operandi were made patent to you gentlemen, it would nullify their claims of personal importance, "enormous following," "tremendous interests," "millions waiting in anticipation," "representatives of 20,000,000 church members," etc.

Third. If their methods were known, then Othello's occupation certainly would be gone! Also note these words of their petition.

"The liquor party has been flooding Congress with petitions from German societies."

Mr. Chairman and gentlemen, right here and from the very house-tops, I want to nail this outrageous slander—this manufactured libel—and in conjunction with this statement I desire to call your attention

to page 8, last paragraph of Exhibit B, under the caption "German-Americans and the Hepburn bill." This statement "at the first hearing on this bill on January 20, 1904, all the opposition was made in the name of German-Americans, of whom thousands had been deceptively marshaled by the brewers to defend their 'speak easy' trade. Many of these opposers are law-abiding men, who do not know that it is anarchy, and not liberty, which they have been called to defend."

This statement in Exhibit B, and the statement in the footnote of this petition, Exhibit A, I combine together in denunciation. I maintain, Mr. Chairman and gentlemen, and you will bear me out, that never in your experience in this or any other Congress has such a vicious and unwarranted libel been asserted. Never has such a monstrous statement before been printed in a Senate document.

You were all present when Doctor Hexamer and the other representative German-Americans made their statements. I do not even know their names or who they are. I do not even, on my honor, know Doctor Hexamer, except by reputation as the accepted and acknowledged leader of several of the most influential German-American associations in the United States. I never saw him before that hearing on January 20, 1904, in this committee room. I have not seen him since.

But this I do know, that the brewers of America absolutely did not influence Doctor Hexamer or his associates' actions and appearance before you.

You all witnessed, as did I, the presentation of these representative German-Americans by the honorable gentleman from Missouri, Mr. Bartholdt, and you heard the learned, firm, and pungent arguments against the Hepburn bill by Doctor Hexamer on the high ground of personal liberty and right, the keynote, the clarion call of the millions of our German-American citizens, as it was the keynote of their forefathers, which resulted in the unification of the great German federation.

And for appearing before you, gentlemen, by the divine right of the citizenship which they have adopted, and voicing their sentiments, which is the great privilege accorded every American citizen, these associations and their officers, who would fain usurp all, all the rights of citizenship, and everything else to themselves, dare arrogate to themselves the power to denounce these representative gentlemen as "defenders of anarchy," but add the additional offense and outrage of circulating these statements under the title of a Senate document and as a footnote to the petition through which they falsely secure signatures by these slanders and misrepresentations.

The next line to read:

To offset this we want the names of churches and organizations.

There you are, Mr. Chairman and gentlemen; this is an exposé of one of their favorite methods. They lay the foundation to secure the signatures of churches and organizations by uttering a falsehood and a slander, and then, through their innocent, sincere followers in the rural district, who believe in their honesty and integrity, seek the signatures of churches and organizations and then approach you gentlemen and strive to impress you with what they are pleased to term "their moral support." It is one of their most approved with which to approach Congress.

Again they resort to femininity:

Several women from every union should be appointed to look after this work.

It is a noticeable feature, Mr. Chairman and gentlemen, that the professional reformer always turns to women as their best and most potent and effective weapon. They fully realize and appreciate the fact that woman's influence is always dominant, and in the matter of obtaining signatures to a petition a woman's solicitation is a difficult thing to resist, as we have all experienced and know.

And I feel justified in indorsing at least one of their statements as being true, to wit, that "millions of signatures have been forwarded to this Capitol on petitions."

But, on petitions which had absolutely no interest to the signer, and whose signature would never have been obtained had not a woman's plea, "Oh, please do sign for me," been the potent power to obtain the signature.

These words convey much:

It will not be necessary to get all the signatures before sending, but keep petitions coming.

There you are, Mr. Chairman and gentlemen. This tells the story to you of the whys and wherefores of the floods of petitions that are showered upon you. It also explains the method in the madness of the institution of headquarters here in the capital city of these various associations by the professional reformers who are at their heads.

It is not the individual who signs, nor the sincere reformer who receives the petition from the association and secures the signature of the petitioner, and who, nine times out of ten scarcely knows what it is all about, but it is the head and front of the offending, right here in the capital city, who incepts, precipitates, superintends, legislates, and lobbies, and who backs up his importunities by having the little sincere reformer at home hustling about with blank petitions, securing signatures, and deluging Congress with said petitions, and working and striving sincerely in the vineyards of the Lord, to "keep petitions coming." Which of course is the oil upon the professional reformer's wheel, and supplies him with the necessary munitions of war, and incidentally the necessary funds with which to conduct the warfare.

The last paragraph: "It is the King's business and requires haste."

I will not comment upon this, gentlemen, except to say if by the "King" they mean the "King of Kings," as a Christian I have no hesitation in expressing my opinion that He does not approve of the methods they employ.

EXHIBIT I.

I respectfully call your attention to Exhibit I, a book entitled "History of the International Reform Bureau," edited and printed by the Rev. Dr. Wilbur F. Crafts, Ph. D.; and in this book he is pleased to term himself in various places the "founder," "inceptor," "superintendent of legislation," "Christian lobbyist," and the "Third House of Congress;" also "Speaker of the Third House of Congress," and treasurer—always treasurer.

For subtitle to this "history" we have the quotation edited by the

Rev. Dr. Wilbur F. Crafts, "Render to Cæsar the things that are Cæsar's." Well, I am trying to!

I ask you to turn to page 41 and read his statement:

I can reach a thousand persons for a dollar, with a letter having the autograph in facsimile of a Senator or Representative in the upper left-hand corner, and so, likely, to attract your attention.

Said Doctor Crafts to your correspondent one day, in explaining his methods:

Envelopes of the ordinary letter size are selected, and of white paper, whenever possible. These Doctor Crafts gets by the thousands, free of charge, from the various Congressmen whose names they bear. They go through the mails under the franking privilege, the only requisite is that their contents shall be "Government matter," but that is easily enough secured, either by having whatever the bureau desires to circulate made a part of somebody's speech or otherwise brought into the official record. Reports of hearings may be franked. So many special articles are prepared for the instruction of a committee on any topic, whenever the committee votes to print them. The reform bureau then gets not only its envelopes and postage free, but a certain large number of copies of the reprint which it is desired to convey.

Mr. Chairman and gentlemen, words fail me to properly express and convey the monstrousness of this declaration in cold print, in which this association, through its superintendent, declares that it can secure "special privileges" at the expense of all the other taxpayers of the United States of America.

Here, for once, is the whole showing of one of the methods of operation by which this International Reform Association, the Anti-Saloon League, and the Women's Christian Temperance Union, distribute slanders and villifications and misrepresentations at the expense of those whom they slander, villify, and misrepresent.

They are all combined in this method, for as you can and have read in the Exhibit B, 9th page, 2d paragraph, these words:

The Reform Bureau is cooperating with the Anti-Saloon League, W. C. T. U., and the National Temperance Society in pressing this important measure (Hepburn bill, H. R. 4072; Dolliver bill, S. 1390) to enactment. Besides numerous syndicate articles in the press and platform appeals, the bureau has sent out more than fifty thousand documents and petition blanks in promotion of this bill.

And on page 17, same exhibit, under the caption "Local reform work of the bureau," 3d paragraph, this statement:

Millions of petitions and practical reform documents have been sent to reform leaders and workers, everywhere, reaching every city, village, and borough of the United States, and every foreign land.

And their further audacious statements on page 15, under the caption "The sacred right of petition," and the form of the petitions encompassing the entirety of page 16, Exhibit B, and the first paragraph on page 17, Exhibit B, with the instruction of the methods to pursue in order to petition, all of which, Mr. Chairman and gentlemen, is concentrated upon the passage of this Hepburn bill, H. R. 4072, and the other measures now pending before the Congress of the United States, and antagonistic to the great brewing industry of America.

Is it to be wondered at, under these circumstances, that the audacity of these associations reaches the crucial climax as expressed on page 18 of this same Exhibit B, under the caption, "Not a Government bureau," where there occur these lines:

Some suppose the reform bureau is one of the official bureaus of the Government.

Mr. Chairman and gentlemen, even in little things these people

are not faithful to the truth. Note on page 7, Exhibit B, under the caption "Bills in restraint of intoxicants and opium," "To prohibit liquor selling in all Government buildings." (McCumber-Sperry bill, S. 2352, H. R. 7034.)

Note also on page 19, Exhibit B, under caption "Committees before whom the foregoing bills are pending."

Third paragraph again occurs the words "McCumber-Sperry bill."

Mr. Chairman and gentlemen, at all times and in all places, and in all of their propaganda, these associations and their officers impugn the honesty and intent of the brewers.

And right here at your previous hearing, and to-day again in your presence, when I have spoken of the desire of the brewers of America to establish decency, morality, and honesty; when I have cited to you the precise verbatim words and sentiments of reform, voiced by those sterling gentlemen the presidents of our association of the brewers of America, Messrs. Obermann, Ebert, Brand, Kendall, and Theurer, you have had demonstrated to you most amply the sneers and derision and depreciation of those sentiments by the officers of these associations present.

Let me give you conclusive proofs of the absolute honesty of the brewers in their intent versus the sneers of the officers of these associations, and the horrible effects resultant upon the enactment of laws which they have created.

Let us suppose (and I realize how difficult the stretch of imagination will be) that these associations and their officers did tell the truth, and that there were 97 saloons in Phoebus, Va., and 53 surrounding the National Soldiers' Home at Milwaukee, or a total of 150 saloons.

If the brewers were not sincere in their reform, would they not naturally want these 150 sources of retailing their product instead of the two post exchanges in the Soldiers' Home which they advocate?

Would it not be advantageous to the brewers to retain the 150 sources of supply of the two post exchanges; were they not honest in striving to suppress red lights and places of disrepute?

Just one hundred and fifty proofs, Mr. Chairman and gentlemen, of the brewers' honesty of purpose, versus the one hundred and fifty proofs of the short-sided dishonesty intent of the reformer.

Why did the brewers advocate the retention of the canteen in the Army? Because during its existence in the 157 army posts that exist in America and its possessions, there were just 157 canteens where the soldiers could purchase wholesome beer under proper control and discipline.

Why do the brewers advocate the restoration of the canteen?

Because, since its banishment there have sprung into existence around these one hundred fifty seven army posts over 1,987 dives and "red lights."

Just the difference between the 157 post canteens, where the enlisted man could secure his wholesome beer, and enjoy the infinitesimal liberty of reading his book, his magazine, or smoking his pipe, or playing chess, or checkers, under the controlling influence of his officers, and the 1,987 dives and slums which now exist around our army posts through the machinations of these associations and their officers.

Just 1,880 additional proofs, Mr. Chairman and gentlemen, of the honesty and sincerity of the brewers' desire to establish reform and preserve law, order, and discipline.

And in these 1,987 dives brawls, fights, law breaking, and robbery and debauchery are of daily and nightly occurrence.

And away and above everything, drunkenness has increased over 200 per cent, crime over 100 per cent, disease (of the most hideous kind) over 150 per cent, and insanity over 20 per cent, notwithstanding the fact that our Army has been reduced over 20,000 in numbers, or over 20 per cent, since the abolishment of the canteen.

And the testimony given at the hearing, before which the fate of the canteen was decided, by these associations and their officers, was as largely misleading as the testimony which I have exhibited here in this hearing on the Hepburn bill (H. R. 4072) and which they have manufactured and distributed to influence the passage of this Hepburn measure and other measures now pending before Congress.

And this statement, regarding the testimony given by them on the anticanteen measure, I hold myself personally responsible to demonstrate and prove.

In proof of my statement regarding the awful increase in drunkenness, crime, disease, and insanity since the enactment of the anti-canteen law, I ask you to read the seventh paragraph on page 9 of the Report of the Judge-Advocate-General of the United States Army:

It is hardly necessary to state that the prohibition of the sale of beer in the post exchange has resulted in a great increase in the number of saloons, generally of the lowest class, in the vicinity of all posts, and consequent injury to discipline. The condition resultant on the practical abolition of the canteen feature of the exchange have been so often and so graphically described that it is needless to go further into the matter here than to say that the temptations to dissipation held out to soldiers immediately outside the reservation line of every post in this department are about as great as it is possible to conceive.

And the convincing array of tables furnished by the Surgeon-General of the Army in his report to the Secretary of War for the year ending June 30, 1903, and his concluding paragraph on page 101, which reads:

The Spanish-American war, by putting the whole Regular Army into active service, greatly reduced alcoholism, but the rates rose again in the next two years. In February, 1901, the sale of beer was prohibited in post exchanges, and admission rates increased markedly that year. It is impossible, also, not to attribute a large part of the steadily increasing venereal disease of the Army to the loss of the canteen, where the soldier, if he so desired, could get his beer throughout the month, but was not subjected to the temptations to intemperance and vice now attendant upon the expenditure of a full month's pay at the low resorts infesting the outskirts of our military reservations.

And the reports of the Inspector-General of the Army to the Secretary of War for the years 1902 and 1903, pages 118, 119, and 120 report of 1902; and page 13 report of 1903, which read as follows:

Effect of abolishing the canteen: It drives the soldier to the outside saloon and dive. When his money is all gone, he then takes to drinking vino and other native drinks, and that is fatal to his efficiency as a soldier. He is soon dead or dishonorably discharged.

Until quite recently the post exchange, with its well-regulated canteen, has been one of the instrumentalities through which this has been attempted, and if, as is believed, it has exercised a wholesome influence on our soldiers at home, in the Philippine Islands it would no doubt prove to be a mental, moral, and physical benefaction.

There is no fear that the sale of beer would initiate or induce habits of intemperance, as the following facts obtained directly from the companies serving in the division December 18 (1901) will show; nor can the post exchange be maintained without it:

Since June 30, 1900, 307 enlisted men have been sent home insane, and Major Arthur, surgeon in charge of the first reserve hospital, Manila, where they have all been under observation and treatment, reports that 78, or 25.4 per cent were insane from the excessive use of alcoholic liquors.

The habit of opium smoking among our soldiers has also been reported.

It is hardly probable, in view of this information, that Congress will continue the prohibition against the canteen, when it is evident that the sale of beer would be a protection against such pernicious habits and their fatal and distressing results.

At all posts in the department both officers and men desire that beer again be sold in the post exchange, to the betterment of the soldiers' fare, and furnishing him a club where, under proper restrictions, the soldier can get beer.

The reports for 94 posts in the Philippine Islands show only 8 enjoying the privilege of an exchange. There were many desertions and few reenlistments at a number of posts. Drunkenness and absence without leave are noted in reports, and trials by court-martial are very numerous. It is believed that a well-regulated post exchange and a thoroughly equipped gymnasium would accomplish more toward contentment and discipline in the Army than almost anything the Government can, under the law, accomplish.

And the second paragraph, on page 32 of the report of Brig. Gen. Fredk. D. Grant, U. S. Army, 1903, which reads:

The abolition of the canteen feature of the post exchange, however radical and positive be the objections to the light beverages formerly served therein, I may say, although a total abstainer myself, is regarded by me as a vital misfortune to the military service. Whatever be the convictions and prejudices of reformers on the subject of temperance, the fact should be apparent that the best and surest methods of fostering temperance is to fight against and oppose all tendency to excess.

Why, Mr. Chairman and gentlemen, I can prove that around one, just one army post, since the enactment of the anticanteen law, 150 licensed dives have sprung into existence.

And right over here at Fort Myer, within the very shadow of the Capitol of the United States, eleven places have been licensed since the enactment of the anticanteen measure.

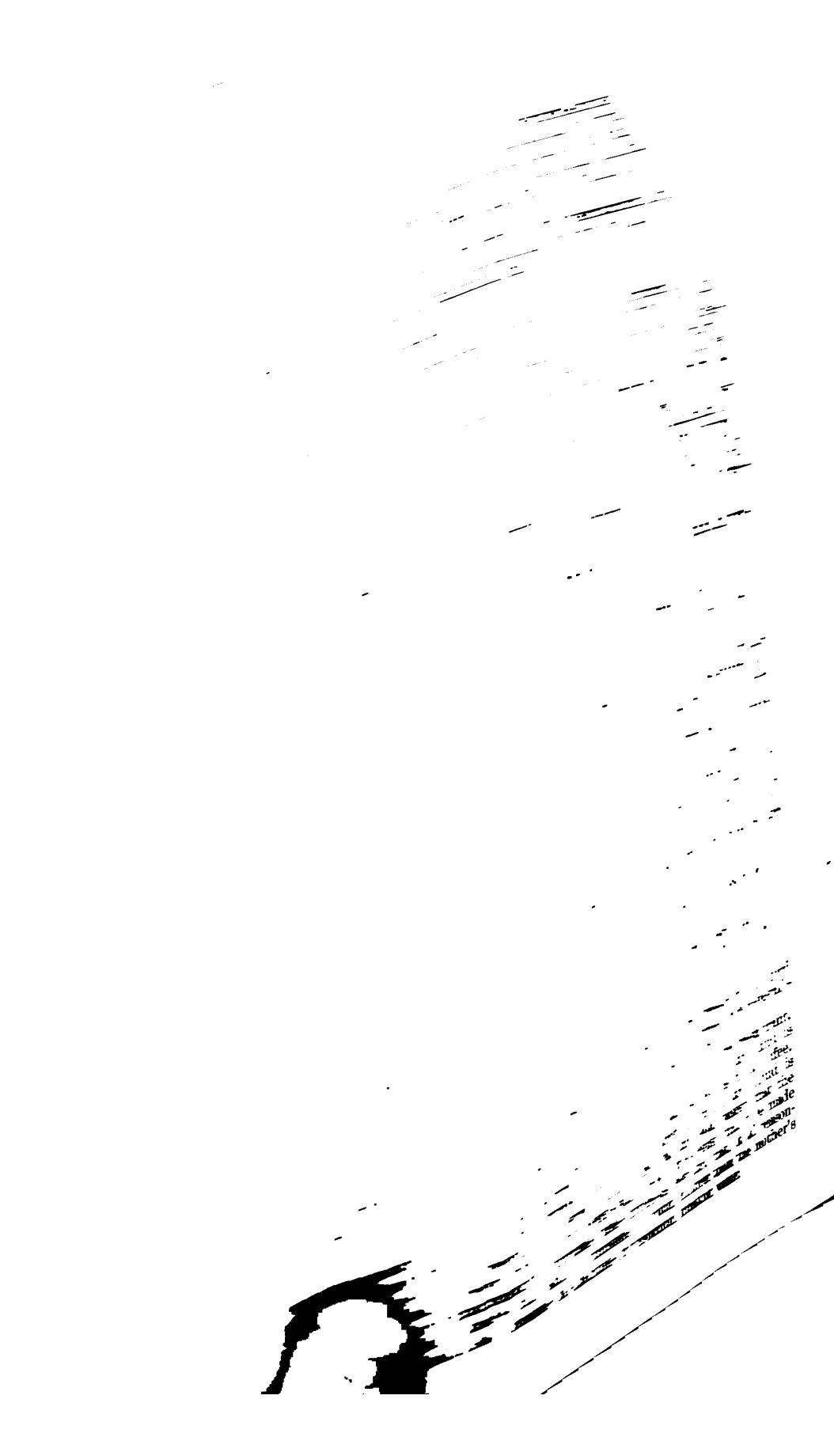
Here are 161 more proofs of the absolute sincerity of the brewers' desire to establish reform.

And this anticanteen measure, which has become a law, and secured through the misrepresentations of these associations, I claim and am positive that I can demonstrate to your entire satisfaction, is absolutely unconstitutional.

Why, Mr. Chairman and gentlemen, let me demonstrate to you in Exhibit D how they misrepresented before the Senate Committee on Immigration in order to secure the passage of the bill eliminating the sale of beer in immigrant stations, which said bill I also claim to be unconstitutional.

Please note the language contained in paragraphs 4, 5, and 6 on page 7, the first paragraph on page 12 (testimony of Mrs. Margaret Dye Ellis), and the statement of the Rev. O. R. Miller, last paragraph, page 12, and first and second paragraphs, page 13, as follows:

But on looking into the parts of the building where immigrants are detained, sometimes for three or four days, until it can be clearly demonstrated that they are not likely to become paupers or criminals, there I found a man with an empty case of beer, to whom I said, "Where can I get a glass of beer?" He said, "Oh, there and there," pointing to two places inside the detention rooms. I went up to the boy at the entrance of one of these lunch rooms and said, "Can I get a glass of milk?" He said, "No." "Can I get a cup of coffee?" "No." "Tea?" "No." But on going to the counter I bought a small bottle of lager beer, the smallest one I ever saw, for 10 cents; however, they would not let me take it away. "I must drink it in that room," I was told. But I would not drink there, or anywhere else, and so I saved my 10 cents. There was no milk, or tea, or coffee for the men, women, and children waiting in that room.



I have been here too short a time to personally observe whether or not any drunkenness occurs in this building. I am advised that it has not occurred in the past; and I have given orders that no undue amount of beer shall be sold to anyone.

Upon the question whether all sales of alcoholic beverages should be forbidden, opinions will necessarily differ. Having in view the character of the people who come here, practically all of them accustomed to the use of light alcoholic beverages in their own country, I can see no reason for preventing those who may so desire from obtaining a moderate amount of beer upon landing. At any rate, I shall for the present decline to recommend the change in the existing Treasury regulations upon this subject.

The letter in question speaks of the immigrants being "treated like cattle," and "herded." In so far as this statement may mean that they are at times crowded, and that the portion of the building set over to the use of railroad companies are inadequate, the statement is correct. The condition is one which can not be wholly remedied except by the creation of additional quarters. To this matter I will, in due time, give my attention.

Respectfully,

W.M. WILLIAMS, *Commissioner.*

And this letter from Hon. F. P. Sargent, Commissioner-General of Immigration:

DEPARTMENT OF COMMERCE AND LABOR,
BUREAU OF IMMIGRATION,
Washington, March 1, 1904.

Mr. DUNCAN B. HARRISON,

713 Colorado Building, Washington, D. C.

SIR: In response to your letter of even date herewith, I have to inform you that my official connection with the Bureau of Immigration did not begin until the commencement of the fiscal year 1903, and I can not therefore reply to your question from my own personal knowledge.

I am informed, however, by officials of the Bureau who were in a position to know, that prior thereto for years it was the practice to furnish tea, coffee, milk, and food to the immigrants wherever held, pending the determination of their right to land.

Respectfully,

F. P. SARGENT,
Commissioner-General.

Mr. Chairman and gentlemen, you will observe the distinction and difference between the statements of the reform associations and their officers and the Commissioner of Immigration of Ellis Island, who states positively in his report to the Secretary of the Treasury that beer, as well as milk, coffee, tea, and soda water, were sold in the lunch room of the detention room at Ellis Island.

You will also note that the honorable Commissioner-General, F. P. Sargent, states that he was informed "by officials of the Bureau who were in a position to know, that prior thereto (1903) for years it was the practice to furnish tea, coffee, milk, and food to the immigrants wherever held, pending the determination of their right to land."

I personally have lived in New York for many years of my life; for a number of years I was an inspector, after which special agent for the detection and prevention of frauds. In the course of my duties I have frequently visited Ellis Island—I can without hesitation say hundreds of times—and I state positively and upon oath that on every one of my visits to the immigrant station at Ellis Island I have seen coffee, tea, milk, soda water, and other temperance drinks sold in the immigrant station at the lunch counters.

I further am ready to testify upon oath, and can prove my statement, that since the abolition of the sale of beer at the immigrant station at Ellis Island, every subterfuge known to man is indulged in in order to secure that commodity, which can be verified by all of the officers of the Government who have anything to do with the Ellis Island immigrant station since the enactment of the provision ^{on} March 3, 1903, prohibiting the sale of beer at immigrant stations.

You will also note that the Commissioner of Immigration, Mr. Williams, did not observe any of the drunkenness which it has been stated occurred in said immigrant station.

Further, that he, Commissioner Williams, had been advised that drunkenness had not occurred preceding his advent to the commissionership.

And yet, Mr. Chairman and gentlemen, on the strength of that testimony these associations and their officers succeeded in securing the enactment of a bill which I claim, and can unquestionably prove to your judicial minds, is absolutely unconstitutional.

And yet this is the class of literature which they are distributing broadcast to influence legislation and crowd the Hepburn bill through.

The saddest feature of all is their lack of Christian feeling, as shown in their statements contained in Exhibits D and E, viz:

We found in Marion no saloons. In the other Homes most of them looked like paupers, and many of them like drunkards, which they really are. They ought to be in an inebriate asylum; they should not be mixed up with the better class of men.

Mr. Chairman and gentlemen, in the name of 80,000,000 of American citizens I resent and denounce this statement, that "most" of the battle-scarred veterans of our wars looked like "paupers" and "drunkards," and I denounce this statement as too monstrous, too foul for words or adjectives to adequately express.

Further, where this same witness, Mrs. Ella M. Thacher, stated regarding her testimony of the Home at Dayton, Ohio—

I saw such sights at that canteen as I hope I may never see again; for example, a man whose eyes had been shot out in battle was led to the counter and a big schooner of beer was put in his hands. I saw another man wheeled to the bar in a chair. That man could not go outside and get beer, I am sure.

And these be your Christian reformers! What reform, Mr. Chairman and gentlemen! What Christian method could possibly be instilled in any community through depriving a poor, sightless veteran, who had lost both eyes in the defense of his country, of a glass of beer, or even a dozen glasses of beer if need be, and he desired it, in the home provided for him by his grateful country?

And the veteran in the chair being wheeled about—everybody knows, who has ever visited the Dayton Home, that this is the poor soldier who lost both legs and both arms in the defense of our flag.

Words fail me, Mr. Chairman and gentlemen, and I know that your indignation is almost beyond suppression. I agree with one of the statements made by the witness—

"That man could not go outside to get beer, I am sure." And if these two men, one without eyes, the other without arms or legs, could go out to get beer, fancy what would occur to them and their pension money in the "vile dives," which these associations and their officers claim exist around all the National Homes, and into whose places they are seeking to drive all the poor old veterans, by stealing away from them their post exchange.

Statements, distortions, and lies.

On page 4, third paragraph, Exhibit "D," the Rev. Dr. Wilbur F. Crafts stated in presenting the officers of the International Reform Bureau and the National Women's Christian Temperance Union and the National Anti-Saloon League, these words:

These four organizations together fairly represent the sentiments of the churches of this country, whose membership is 27,000,000, more than one-third of our population.

Mr. Chairman and gentlemen, I contend that this statement is the most monstrous fabrication of any of the statements made by this creature.

I claim that they do not represent anyone but themselves, and their selfish, commercial ends.

I claim, and I know that you Christian God-fearing gentlemen will support my contention, that there is not one sincere Christian in this, or any other land, who will accept these people and their awful false methods, to represent him in anything.

I refuse to believe that the most guilty criminal on earth would approve of the principles laid down and the methods adopted by any-one of these "leaders" of reform.

Mr. Chairman and gentlemen, from the sales of beer in seven of the National Homes, during the fiscal year ending June 30, 1903, the gross profits secured were \$165,099.08, divided as follows:

Western	\$17,660.48
Pacific	13,388.08
Danville	17,562.00
Northwestern	14,455.55
Southern	21,638.66
Central	52,565.63
Eastern	27,828.68

Total

165,099.08

These large profits are due to the fact that the brewers sell their products to the post exchanges at practically cost price, and the further fact that the old veterans have absolutely no expenses in the shape of rent, light, heat, advertising, etc.

With these profits the old veterans and sailors in these seven institutions have been enabled to enjoy the following pleasures for the past year ending June 30, 1903:

Concerts, free	2,097
Plays, free	2,238
Excursions, free	146
Billiard tables purchased, free	21
Bagatelle tables purchased, free	3
Pool tables purchased, free	18
Pigeonhole tables purchased, free	4
Sets of chess and checkers purchased, free	62
Newspapers purchased, free	790
Books	66,196
Books read	202,254
Boats purchased, free	27
Magazines purchased, free	230
Conservatories constructed, from which flowers are grown for the sick and the dead	8

In addition to the above pleasures and diversions, the gross sum of \$56,501.40 was paid from the exchange profits on beer to civilian employees for services rendered in the Homes, divided as follows:

Western	\$3,836.96
Pacific	1,500.00
Danville	7,934.17
Northwestern	6,653.82
Southern	9,247.50
Central	17,416.63
Eastern	9,912.32

Total

56,501.40

This amount was mainly used for construction work for conservatories, etc., but it was all derived from the profits on beer sold at the post exchanges.

The attendance at the above Homes during the year ending June 30, 1903, reached the total of 30,166, divided as follows:

Western	5,054
Pacific	3,266
Danville	4,073
Northwestern	3,267
Southern	4,390
Central	6,987
Eastern	3,129

Total

30,166

The number of inmates stricken blind for the year aggregate 468, divided as follows:

Western	31
Pacific	39
Danville	20
Northwestern	50
Southern	48
Central	181
Eastern	99

Total

468

The number of inmates stricken insane during the year ending June 30, 1903, aggregated 660, divided as follows:

Western	64
Pacific	26
Danville	67
Northwestern	65
Southern	85
Central	188
Eastern	165

Total

660

The total transferred to the Government Hospital for the Insane were 111.

The number of sick and hospital patients during the year ending June 30, 1903, aggregated 23,961, divided as follows:

Western	3,694
Pacific	3,561
Danville	3,528
Northwestern	2,686
Southern	2,092
Central	6,929
Eastern	2,471

Total

23,961

The number of deaths that occurred during the year ending June 30, 1903, reached a total of 1,742, divided as follows:

Western	278
Pacific	226
Danville	138
Northwestern	190
Southern	269
Central	455
Eastern	186

Total

1,742

The average of members who died during the year ending June 30, 1903, was 67.36.

And those who are left, Mr. Chairman and gentlemen, the remnants of this gallant band of old heroes, are to be "reformed" by the same contingent that forced the anti-canteen measure upon our incomparable Army. What next! What next!

The total amount of beer for the above seven homes for the year ending June 30, 1903, amounted to gross, \$265,514. At the ratio of inmates, 30,166, and at 5 cents a glass (double the quantity to the glass) it would average about \$9.50 per capita per year, equal to about 79½ cents per capita per month, about 19 cents per week per capita, or 3½ cents per day per capita, six days to the week.

And this is the crime of which the old soldiers and sailors are guilty, and for which they are to be "reformed."

Does it not strike you, Mr. Chairman and gentlemen, that Mr. "Reformer" is searching for "fly specks in black pepper?"

Do not let the impression prevail, Mr. Chairman and gentlemen, that the post exchanges and the sale of beer and attendant amusements are the only features of the National Soldiers and Sailors' Homes. Let me call your attention to the following societies existing in these homes:

Grand Army of the Republic members, 1,104, divided as follows:

Central	243
Northwestern	126
Eastern	123
Southern	120
Western	150
Pacific	202
Danville	140
 Total	 1,104

Union Veterans' Legion members, 817, divided as follows:

Central	180
Northwestern	30
Eastern	67
Southern	87
Western	84
Pacific	189
Danville	180

Total

Literary Club members as follows	28
Spanish War Veterans' Society	43

Soldiers' and Sailors' Auxiliaries to Women's Temperance Union, 492, divided as follows:

Central	250
Eastern	114
Southern	128

Total

Christian Temperance Club members, 514, divided as follows:	
Northwestern	121
Southern	98
Western	95
Danville	200
 Total	 514

It is a most striking commentary, Mr. Chairman and gentlemen, that the members of these temperance societies all participate in the plays, excursions, concerts, boats, billiards, pool, shuffleboards, chess and checkers, free of charge, and hold all their meetings free of rental in the theaters of these homes, all of which were and are secured and provided for from the profits derived from the sale of the much assailed beer.

They are not rebuked for their temperance affiliations by their comrades who do drink beer; there is no reflection cast upon them for not contributing their share for the building of the theaters of which they have free use, and for their participation in the pleasures provided for them free of cost through the profits made on the sale of beer. No, gentlemen, the old soldiers and sailors are too broad, too liberal, to make such a discrimination.

In these resting places of our veteran heroes, peace and affectionate comradeship prevail, irrespective of religion, sect, nativity, or creed. The uniform universally worn, and the fact that they all fought under the one flag for our country, is the quintessence of their fraternity.

There is but one danger of discord, and that is the passage of this measure now before you which would debar the veterans from their little luxuries and innocent amusements—all that is left to them in the short span of life before them.

The only thing they dread, outside of the approach of the grim reaper, is the meddlesome, unwarranted interference with their fundamental rights of liberty of thought and the interference with their established customs—theirs, and theirs alone, by the rights of law, of justice, and of gratitude of our nation.

Right here, with your permission, I will quote a letter received by me a few days ago from Maj. Gen. R. C. Drum, retired, for years Adjutant-General of the United States Army:

Maj. DUNCAN B. HARRISON,
Washington, D. C.

The sale of beer and light wines was authorized by one of the best temperance men in public life, President Rutherford B. Hayes. No one who has been in a position to form correct judgment on the subject doubts for one moment that the President's action was right.

R. C. DRUM.

Mr. Chairman and gentlemen, up to June 30, 1903, in the seven soldiers and sailors' homes which I have cited as fair examples of the forty-one homes established, there were veterans of our wars who had sustained the following wounds:

Loss of both legs and both arms.....	1
Loss of both legs.....	7
Loss of both arms.....	4
Loss of one arm and one leg.....	15
Loss of one arm.....	170
Loss of one leg.....	208
Other wounds.....	1,508
Stricken blind.....	468
Stricken insane.....	660
Other diseases.....	22,903
 Total.....	 25,944

A terrible, heartrending, awful array, Mr. Chairman and gentlemen, that I wonder—I marvel—how any man or men could advocate or even

think of curtailing from these poor creatures any of the infinitesimally little pleasures left to them in this life.

And these poor, maimed, blind, insane, and battle-scarred veterans are all that are left of our "Boys in blue," whom we are prone to laud, to sing of, and to praise.

And yet we tolerate the thought of these "reformers" (God save the mark!) denying the right to these poor remnants of our legions to drink their beer, to talk over the battles fought for us, to witness their plays, to hear their music, to indulge in their innocent amusements, to play their games, to smoke.

Oh, God! that each poor wound could speak in opposition to such reform!

What would be the result, Mr. Chairman and gentlemen, if this measure should become a law? It is too horrible to picture even in imagination. According to the present law no place for the sale of liquors is permitted to exist within the radius of a mile limit of the National Soldiers and Sailors' Homes, therefore, our poor veterans would have to limp and hobble and be led a mile or more from the outskirts of the Home in order to get their beer, for drink it they will, and shall.

Their average age last June was 64.13, but in this average there is included 7,317 members of ages from 70 to 100 years, divided as follows:

From 70 to 80 years old	6,747
From 81 to 90 years old	544
From 91 to 100 years old	26

Divided in the various Homes as follows:

	From 70 to 80 years old.	81 to 90 years old.	91 to 100 years old.
Central	2,015	88	None.
Northwestern	905	186	12
Eastern	1,156	16	2
Southern	398	27	1
Western	1,139	121	4
Pacific	484	37	4
Danville	655	69	3
Total	6,747	544	26

It seems hardly possible to me, gentlemen, that even a professional reformer could make much progress in correcting habits formed by men of such venerable years.

If the "reformers" have their way we shall witness the hideous spectacle of these poor old creatures seeking their comforts beyond the limits of the Homes.

Dives of the most vicious character would spring into existence at the mile limit prescribed by law. The "red light" would wave, and these poor old veterans would be drugged, robbed, beaten, and thrown out to die, as happened around all of the army posts to the young, stalwart, active soldiers when the canteen was suppressed by these self-same "reformers."

But then the "reformers" would have achieved another victory, and their donations would multiply correspondingly.

The strains of music and the lilt of song, the one great pleasure left to the blind, would cease.

But "reform" and "reformers" would score another triumph.

The little pleasure trips, excursions would be stopped; the games would wear out and their boats rot away.

But the "reformers" would have another inning.

Insanity would increase fourfold.

But the professional "reformer" would wax fat, and lean back in his cushioned chair in his splendidly equipped office and smile and say with gloating satisfaction, "We did it with our bill." And then he would issue more propaganda; secure additional contributions and haunt the halls of Congress, and button-hole Members and Senators and look for other victims to "reform."

When they pushed the anticanteen measure they placed a premium on crime.

In this attack upon the old veterans they establish the crime itself.

Mr. Chairman and gentlemen, I solemnly declare, and statistics will bear me out, which I will present before you to prove my statement, that wherever these "reformers" have caused their measures of reform to be established affecting the beer interests, those measures have redounded to the advantage of the "red lights," speak-easies, and crime.

Wherever enforced prohibition exists there exists proportionately to a greater extent its counterpart deceit—lying, cheating, and crime.

To the sincere reformer I say, God bless and God speed you! To the deceived reformer I say, God help you, for yours will be a rude and unhappy awakening. To the professional reformer, I pray God take you, and quickly!

Mr. Chairman and gentlemen, the great divine, the Rev. Henry Ward Beecher, voiced the sentiments of all mankind when he said: "When you tell me I ought not to drink, I may agree with you; when you tell me I shall not drink, I will, because it is my natural right."

I beg to call your attention to the names of the gentlemen who are managers of the National Homes:

The President, the Chief Justice, the Secretary of War, General McMahon, General Mitchell, Colonel Steele, General Pearson, General Anderson, Colonel Cook, General Henderson, General Brown, Major Bonsall, Captain Palmer, and Colonel Brownlow.

According to the reformers, these sterling gentlemen, and all of their predecessors from the institution of the Soldiers and Sailors' Homes to the present moment, have been guilty of a great and grievous wrong in permitting the old soldiers and sailors, the wards of our country, to indulge in the petty liberty of a glass of beer when desired, and the pleasures that that indulgence provides.

According to the theory of these reformers, the average of 3½ cents a day, which the veteran soldier and sailor pays for his beer, is practically a debauch in the estimation of these "sainted" gentlemen.

According to the claims of these associations, our honored Presidents, General Grant, General Hays, General Garfield, General Arthur, Mr. Cleveland, General Harrison, Major McKinley, and Colonel Roosevelt, severally and collectively, countenanced a heinous offense upon sobriety and morality by permitting these poor old veterans to have their beer. I only ask you to compare the list of our foremost men just mentioned with the individuals who are advocating this bill. Further comment is unnecessary.

You will note in Exhibits D and E. Exhibit D, page 5, 7th paragraph, and Exhibit E, last paragraph, page 1, how the superintendent and treasurer of the International Reform Bureau strives to fasten upon General Patrick, of the Soldier's Home at Dayton, this statement:

The beer hall is the property of the United States, and can not be taxed. It is entirely under the control of the council of administration.

Mr. Chairman and gentlemen, General Patrick was universally termed the dean of the National Soldiers' Homes, he was one of the inceptors of the National Homes, and was recognized as a man of more than usual prominence. His name is national.

General Patrick was absolutely a total abstainer, and fought the question of the introduction of beer into the Soldiers' Homes bitterly; but finally, after a trial, recognized its value as a controller of the veterans and adopted it as a method of reform. In one of his speeches, which I present to you, General Patrick stated:

I was formerly a prohibitionist in New York, but I found the leaders were corrupt politicians, and those in the legislature unreliable, so I left them.

This speech of the honest, blunt old general has never been forgotten or forgiven, hence the animus.

Mr. Chairman and gentlemen, I think you will concede that the measure now before you, the Hepburn bill, 4072, would never have been heard of if it had not been for the pernicious activity and false representations of these associations and their officers.

I stated in my opening that I was not an orator; I certainly make no claim at being a lawyer.

But I maintain that any and every citizen has the right of personal liberty so long as he conforms with the law.

I maintain that the brewers of America have established the right to the claim of citizenship; that they have in every way conformed with the laws of their country; that their taxations have been complied with; that they have met every demand ever made upon them by both National and State governments.

I maintain that with the acquiescence of the National and State governments they have established their trade, and based on the establishment of that trade, with the consent of the National and State governments, that they are entitled to protection from interference in that trade.

And that the National and State governments can not justly enact a law to despoil them of what they have not only sanctioned but participated in.

The government which takes away from its citizens what it can not restore performs a rank injustice.

Particularly when the instrument employed is proven to emanate through deceit, fabrications, and misstatements such as I have exhibited to you.

Enforced prohibition is the brother of lying, of treachery, of deceit, of lawbreaking, and I have proven it so to be by the evidence I have presented.

If this bill becomes a law you will see the same scenes enacted which I witness every year in my home in Maine, which I have frequently witnessed in other prohibitive States.

Violations of the law, wholesale drunkenness, deceit, lies, speak-easies, and subterfuges of every nature, the very things the brewers are striving to stamp out.

And what does this Hepburn bill present from the standpoint of analytical law? It simply is a vehicle to force Congress to enact a national law to perform the police duties of States.

It is a contemplated reversal of every law heretofore presented and enacted.

It is a contemplated violation of the Constitution, which states:

SECTION VIII—Powers granted to Congress.—The Congress shall have power: (1) To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

Therefore I maintain that the Hepburn measure is unconstitutional, for the reason that all excises shall be uniform throughout the United States. Ergo, Congress can not enact a measure that would lack in uniformity of excises.

The Hepburn bill, 4072 (H. R.), expressly stipulates that—

All fermented, distilled, or other intoxicating liquors, or liquids, transported into any State or Territory for delivery therein, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within the boundary of such State, before and after delivery, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages, or otherwise.

This provision is a matter absolutely for the State laws, and the State laws only, to control.

And I maintain that if the Congress of the United States were to enact this measure it would be interfering with "States' Rights."

Further, that it would specifically violate that provision of the Constitution which stipulates that "all excises shall be uniform throughout the United States."

In other words, the Hepburn bill admits of the construction that the National Government shall enact a provisional law, nonuniform, allowing "A" to sell fermented, distilled, or intoxicating liquors or liquids in the District of Columbia, and denying "B" the right of sale of the same commodities in the State of Maryland.

These are matters purely for the consideration of State governments to control.

My contention I find is supported by the Supreme Court of the United States in *Downes v. Bidwell*, 182 U. S., 259.

Loughborough v. Blake, 5 Wheat., 317, was an action of trespass (or, as appears by the original record, replevin), brought in the circuit court for the District of Columbia to try the right of Congress to impose a direct tax for general purposes on that District. 3 Stat., 216, c. 60, Fed. 17, 1815. It was insisted that Congress could act in a double capacity; in one as legislating for the States, in the other as a local legislature for the District of Columbia. In the latter character, it was admitted that the power of levying direct taxes might be exercised, but for the District purposes only, as a State legislature might tax for State purposes; but that it could not legislate for the District under Art. I, sec. 8, giving to Congress the power "to lay and collect taxes, imposts, and excises," which "shall be uniform throughout the United States," inasmuch as the District was no part of the United States. It was held that the grant of this power was a general one without limitation as to place, and consequently extended to all places over which the Government extends, and that it extended to the District of Columbia as a constituent part of the United States.

Again, *Knowlton v. Moore* (178 U. S., page 42):

The provision in section 8 of Article I of the Constitution that "all duties, imposts, and excises shall be uniform throughout the United States," refers purely to a geo-

graphical uniformity, and is synonymous with the expression "to operate generally throughout the United States."

Mr. Justice Miller, in his lecture on the Constitution (New York, 1891), pp. 240, 241, said of taxes levied by Congress:

One of the learned counsel puts it very clearly when he says that the correct meaning of the provisions requiring duties, imposts, and excises to be "uniform throughout the United States" is, that the law imposing should "have an equal and uniform application in every State in the Union."

In the celebrated trial of the Head Money cases, 112 U. S., p. 594:

The Congress shall have power to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

The uniformity here prescribed has reference to the various localities in which the tax is intended to operate. "It shall be uniform throughout the United States." Is the tax on tobacco void because in many of the States no tobacco is raised or manufactured? Is the tax on distilled spirits void because a few States pay three-fourths of the revenue arising from it?

And these are the opinions of the Supreme Court of the United States, which in my conviction apply directly to the Hepburn bill, which, as you now know, emanates directly from these associations, and which, in conjunction with other bills mentioned in their propaganda, they claim as theirs.

There is no limit to their claims through the great commendable democratic feature of this, our great Republic.

The proverbial open door of Congress, the open halls of legislation, where the humblest petitioner can be heard, the leaders of these associations, armed with the raiment of their supposed Christian calling, have obtained a foothold, which they have more than abused.

I'll guarantee the truth of one of their statements, that they have distributed millions of documents throughout the world; but nearly everyone of these documents distributed by them have been sent in violation of the law of Government franking, and I challenge them to dispute my statement.

I have positive information that tens of thousands of the pamphlet, Senate Document No. 150, with its abuse and slanders upon the brewers and German-Americans who appeared before you at the last hearing—and are here to-day. This document, with its other misrepresentations, its self-glorifications of the individual styling himself "founder," "inceptor," "superintendent," "Christian lobbyist," "chairman of the third house of Congress," and "treasurer," always treasurer, and being distributed under Government frank, free. Free to them, but at the expense of the taxpayer.

Thus we have the startling anomaly of a partnership forced by them upon the Government, in which the Government is deceived into distributing abusive, libelous literature against the millions of German-American citizens and the brewers and their industry with one hand, while with the other hand the tax is taken from the brewers to pay for the circulation of said libels and slanders.

I maintain without fear of successful contradiction that every time these societies distribute a Senatorial or Congressional frank they either slander, vilify, or violate the law; and I respectfully submit the following franked packages distributed by these various associations in support of my statement.

Mr. Chairman and gentlemen, in conclusion, let me in behalf of the brewers of America state:

This exposé of the false doctrines and falser methods of these corrupt leaders of these associations is not a blow at reform or a stab at Christian endeavor.

On the contrary, it is like a thunder shower in torrid weather, simply a clearing of the atmosphere surcharged with oppression and unbearable humids.

The brewers want and seek, and enact, honest, judicious reformation of standard abuses.

The chicaneries and dishonest methods of the leaders of these reform associations (it must be patent to you, thinking, gentlemen) required exposure and upheaval, and the result will be a clearing of the moral atmosphere.

Christian reform, honest endeavor has not received a setback—no, a thousand times no. It has simply had its eyes opened to several facts, absolute facts.

First. Its methods were wrong.

Second. Its leaders had adopted these methods, which were both unscrupulous, dishonest, drastic, shortsighted, retroactive, and which put their associations always in a false light, and eventually on the defensive. For the laws of justice, of nature and of God, will invariably remedy such evils and expose them.

They now see their leaders shorn of their powers to self-aggrandize, to deceive, and to secure self-emolument, and their perniciousness demonstrated, and will realize that any man or men, association, industry, or nation, must have clean hands before they call attention to the soiled condition of others.

They now see the brewers as they should be seen, not with a crown of glory, or surrounded with a halo, but as sincere, self-respecting, dignified, God-fearing citizens, progressive, honest, and jealous of their integrity.

They will, therefore, concede to them what is their just due, respect, and appreciations. It will bring them into closer relationship, and perhaps they will accept the hand the brewers extend, and assist the brewers in their practical and only effective methods that always have and always will be resultant in the achievement of the elimination of vice and iniquity.

You will, gentlemen, I trust, concede the temperate language I have used in contrast with the terms the officers of these associations have applied to my principals and their industry.

True, all the adjectives in the vocabulary could be used and then be inadequate to fully condemn the practices and methods in which they have indulged to attain their ends. But abuse is not for me, nor for the brewing industry to adopt.

We prefer to leave them to their own consciences to take them to task, and for their duplicity they must answer to their people, to you, gentlemen, and to their God.

I regret more than I can express that it was necessary so include some of the women of these associations in this exposé, for I fully and honestly believe that they have been largely misled and impersonally vindictive; perhaps there are private reasons for their vindictiveness which are too sacred to probe, and which we must all respect.

And now, Mr. Chairman and gentlemen, I desire, in your presence

and in the presence of my officers and principals, to state, with their full approval, that the brewers of the United States of America ask for honest, practical reform, not reform such as the Hepburn bill (H. R. 4072) proposes, for its enactment would, as I have proven, be a repetition of the bills "crowded" through Congress by these associations, and would result in the further establishment of red lights, vice, dives, crime, and deceit, such as has resulted through the enactment of the anticanteen measure, such as can be seen and does exist in every enforced prohibitive community, where the words "Thou shalt not" meet with the response, "What right have you to deny and deprive me? I can and will."

And then, by every subterfuge known to the ingenuity of man, by all secretiveness and design which the human mind can formulate, evade the laws and secure the commodity through deceit, strategy, prevarication, and violation of the enforced law.

But the brewers are practical men, and desire to place themselves on record as stating that they will both help and lead in practical methods of reformation of abuses, and voluntarily accept and adopt any reasonable measure to correct them.

Mr. CLAYTON. I move to adjourn. It is after 5 o'clock.

The motion prevailed, and thereupon, at 5.15 o'clock, the committee adjourned until to-morrow, Thursday, March 3, 1904, at 10.30 o'clock a. m.

THURSDAY, *March 3, 1904.*

The committee met at 10.30 o'clock a. m., Hon. John J. Jenkins in the chair.

STATEMENT OF REV. F. E. C. HAAS.

Mr. HAAS. Mr. Chairman and gentlemen of the Judiciary Committee, thanking you for the kindness that I am allowed to speak before this respectable and honorable committee, I would like to say that I will not take too much of your most valuable time.

I am a minister of the gospel, an American, not by birth, but by choice, of German descent, and my work is especially confined to the German-Americans of this country.

I have the honor to introduce myself to you as pastor of the German Evangelical Church of Newark, N. J., which is the oldest German church of that city, and among the members of which were different esteemed gentlemen who served in different high positions, not only in the State of New Jersey but also in our National House of Representatives. I only mention the names of the gentlemen Lehlbach and Fiedler. I am also a member of the German Evangelical Synod of North America, a synod which represents a body of about 1,100 congregations, 900 ministers of the gospel, scattered all over the United States of America from the Atlantic to the Pacific oceans. And for some six years I have been secretary of the Atlantic district of this synod.

I state this not as if I wished to boast of my position, but simply to show that there are great numbers of churches and church members who do not believe in prohibition, but who deem it their right

not to be governed in their life as Christians and citizens by prohibitionists, knowing very well and believing firmly that true christianity has nothing whatsoever to do with prohibition.

For what is Christianity, or what does Christianity mean? Christianity is a firm belief in God, who has given himself to us for a Father through his only begotten Son, Jesus Christ, for all who believe in Him, and who governs and leads us by His holy spirit, as St. Paul says in the Bible (Romans viii, 14-15).

For as many as there are led by the spirit of God, they are the sons of God. For ye have not received the spirit of bondage again to fear, but ye have received the spirit of adoption whereby we cry "Abba, Father."

This means Christianity, and in this manner I maintain myself to be a Christian, honestly and truly, and therefore I protest against any external force or coercion—as is involved in prohibition—not coming from the spirit of God. For the Bible says (St. John viii, 32), "Ye shall know the truth and the truth shall make you free." Therefore, being free as a Christian, I know what I have to do or not to do, and as such I do neither want nor need any prohibition.

But, says the other side, prohibition means to prohibit the people from making, selling, buying, or using such an awful thing as liquor is, considering as liquor all fermented, distilled, or other intoxicating liquors or liquids. And furthermore they claim that it is depravity—which certainly means a very bad sin—to use, make, sell, or buy any liquor of this kind.

If this were true the Bible and even our Lord and Master Jesus Christ did teach us to commit sin as might be clearly seen by listening to the following words from the bible: "Noah, whom St. Peter calls (Peter II, 5) 'a preacher of righteousness,'" made wine and drank it. Melchizedek, "the priest of the most high God" (Genesis XIV, 18), brought forth bread and wine to Abraham and his young men. Isaac in blessing his son, Jacob, said unto him (Genesis XXVII, 28), "God gives thee of the dew of heaven and the fatness of the earth and plenty of corn and wine." Speaking of the manifold blessings and graces which God has given to mankind, the poet of the 104th Psalm names, "Wine that makes glad the heart of men" (verse 15), and in the Proverbs we find (Proverbs XXXI, 6), "Give wine into those that be of heavy hearts."

And what will we say if we read that Christ himself made wine at the wedding feast in Galilee, and that this wine was real good and strong was clearly to be seen from the words of the governor of the feast, who as an expert praised the very goodness of it (Job II, 1-11). Yes, even Christ himself drank wine, not only during the holy supper, which he told us to celebrate often as a remembrance of his death, but also during his life time, as might be seen by his own words, where he says to the Jews (Luke VII, 33, 34), "John the Baptist came neither eating bread nor drinking wine; and ye say he hath the devil. The son of man has come eating and drinking; and ye say, behold, a glutinous man, and a wine biber, a friend of publicans and sinners." And the greatest of all apostles, St. Paul, gives the following advice to Timothy, his young friend and brother (I Tim., v 23), "Drink no longer water, but use a little wine for your stomach's sake, and thine other infirmities." An advice which if followed would doubtless be very good to many of those who proclaim and fight for prohibition.

Now, Mr. Chairman and gentlemen of the committee, although I could do so, I will not bring up more words out of the Bible, thinking that I have proved to you the verity of my statement, that true Christianity has nothing whatsoever to do with prohibition. Therefore, we stand by and live up to the words of St. Paul, who wrote to the Colossians (Col. ii, 16), "Let therefore no man judge you in meat or in drink," and we do that, not as anarchists, as it was said yesterday, but as true Christians, understanding rightly and following strictly the evangel of Christ and his disciples.

We know very well that there are synods and church bodies in the United States—Methodists, Baptists, and others—who make total abstinence from liquor a condition of membership, but what I would like to say to them is this:

Firstly, I do not believe that the question of prohibition is a question of Christianity at all, and therefore I protest against prohibition as being a principle of Christianity.

Secondly, I dare to say that as far as the real German Evangelical churches in this country are concerned, at least nine-tenths of the regular members of these churches are against prohibition of any kind, deeming it one of their holiest rights to eat and drink whatever they find good for them, and taking these things as a gift from the hands of their Father in Heaven.

And therefore in the name of true Christianity I ask you to vote against the Hepburn-Dolliver, or any other bills trying to prohibit people from getting whatever they like to eat and drink.

STATEMENT OF REV. FREDERICK WISCHAN, PASTOR OF THE GERMAN-LUTHERAN CHURCH (ST. PAUL'S CHURCH), PHILADELPHIA, PA.

Mr. WISCHAN. Mr. Chairman and members of the committee, I am not in the service of brewers or saloon keepers, but I am a minister of the Gospel in the service of God, the Almighty.

I have the true temperance question at heart, and that is why I came to Washington to-day.

I am born of Christian parents. My father was a pastor in Germany, and my parents taught their seven children temperance in food, drink, dress, and so forth. I have never taken a glass of whisky in my life, but wine and beer are used at home with our meals.

I have been pastor of a German Lutheran congregation in Philadelphia for 34 years, and do not preach sensationalism, but the Gospel, the true teaching of the Holy Scriptures. I preach temperance in all things, and, therefore, also in food and drink. I caution my members against gluttony and drunkenness, but I also caution them against the hypocrisy of the total abstainers. For the past six years I have renounced voluntarily, and have not touched a drop since that time of beer or wine, but I have wine in my home, and I teach my sons and daughters to drink moderately.

The Mohammedans in Turkey and the Mormons in all countries forbid the use of wine and beer. And there are many churches in our country that reject the use of wine for their holy communion; they substitute for it water, or milk, or unfermented grape juice. These teachers want to be more pious than Jesus and His apostles.

The Jews partook of wine at their Passover. Each father drank from his cup, and then passed it to every member of the family. Jesus administered the same genuine wine at the first communion. The first Christians used it, and for the past 19 centuries this actual wine has been used for the Lord's supper. Why, I have a friend who was formerly a pastor in Dakota. In order that he might have wine shipped from Chicago for use at holy communion, the shipper was obliged to mail the box "eggs."

Against any such hypocrisy I protest strongly, and the whole church council of my congregation have resolved to protest against this law.

Of course, as loyal citizens of the United States, we must obey its laws. But the lawgivers of our country should not enact laws which are opposed to the word of God.

And, in short, what we wish is what was said yesterday. I read it in the paper this morning. The question is, "Would you have any objection to a provision being placed in the bill to the effect that it is not intended to interfere with the private or family use of liquors?" That is our question and our standpoint.

I thank you very much.

STATEMENT OF REV. G. A. BOEHRIG, OF PITTSBURG, PA.

Mr. BOEHRIG. Mr. Chairman and gentlemen of the committee, I am not a brewer, I must say; as you know, not a liquor dealer; I am a minister of the gospel.

It was to my great astonishment that yesterday a line was so sharply drawn between German-Americans—and whom? And what? Since I have sworn allegiance to this country, that is fifteen years, I always considered and called myself an American citizen, and although I am but an adopted son of this, our free country, I love it nevertheless, and I love the people living within its borders, and I like fully to do my duty as citizen as well as minister in my vocation.

Our duty is not only to preach the word of God, but in doing so to build up the character of men and to lead men to the freedom of the children of God. This aim can never be forced, nor can it be attained by external coercion.

It is nothing but an inwardly growing—that is, a growing of the inner man—of the character of man. All prohibition measures are nothing but external coercion, by which men will never grow internally. All such external measures seem to me unworthy of free people. We should try to lead men to inner strength and freedom. It is true we pray to our God "And lead us not into temptation," but we know also well enough that temptations must be in this world, that man must struggle against temptations, that life in itself is combat and struggle.

The insinuation has been made that church members really wish such prohibitive measures as are provided for in the Hepburn bill. Kindly allow me to state that there are thousands and hundreds of thousands, yea, millions, of good and Christian church members who deem such measures inexpedient.

I myself am representing not only my own congregation in Pittsburgh, but I am a representative of the whole independent United Evangelical Protestant Church of North America. Among them all, I might assure you, you will not find one voice for prohibition, neither of man nor woman, but all are against prohibition of any kind, and

still they are Christians, and still they are all honorable men and women, and are temperate.

I, myself, if you will excuse me gentlemen, come from that part of the Iron City which is called Temperanceville. It was stated here yesterday that women especially advocate such prohibitive measures. Truly, I must pity every woman whose husband is a drunkard and can not be restrained except by utter force. I am afraid he will never be restrained and will never become a man, notwithstanding all prohibitive measures. Indeed, the women of my congregation were just as eager to set their names to antiprohibition. They want freedom for their husbands; they want free men—no slaves in any sense. They want no hypocrites. They want their husbands to be true, sincere, and upright men.

So, not for the sake of any special man or class or party, but for humanity's sake, for the sake of morality, for our great nation's sake I should humbly and earnestly entreat you gentlemen to vote against any such prohibitive measure in the name of the principles of the Independent United Evangelical Protestant Church of North America.

Mr. THOMAS. Is it your position that there should be no legal restraint upon the sale of intoxicating liquors?

Mr. BOEHRIG. I am against prohibition of any kind, and so are our congregations.

Mr. THOMAS. That there should be no legal restrictions at all on the sale of intoxicating liquors—that the sale should be free and unrestricted by law?

Mr. BOEHRIG. Oh, no; we are all law-abiding people. If there is any law we will stay by the law.

Mr. THOMAS. But your position is that there should be no law against intoxicating liquors.

Mr. BOEHRIG. No prohibition law.

Mr. THOMAS. You are opposed to restrictions on the sale of intoxicating liquors; that is your position?

Mr. BOEHRIG. Yes, sir.

Mr. DINWIDDIE. Could I ask if the gentleman officially represents the church to which he belongs?

Mr. BOEHRIG. Yes, sir; I have been sent here from the body of the ministers to represent them.

Mr. DINWIDDIE. The whole church?

Mr. BOEHRIG. The church.

Mr. DINWIDDIE. I would like to get this clear. Will you kindly state what body has taken the action which you represent; was it a local body, or your local church, or some general local body?

Mr. BOEHRIG. It is the Ministers' Association of the Independent United Evangelical Protestant Church of North America. I am a member of that, and I am the editor of our paper, and I have been admonished to come here.

Mr. DINWIDDIE. An independent church. How many ministers in it?

Mr. BOEHRIG. Fifty-four.

Mr. DINWIDDIE. How many members?

Mr. BOEHRIG. Sixty congregations. We had 66,000 names when we petitioned for the opening of the World's Fair on Sunday 10 years ago.

Mr. DINWIDDIE. And when and where was the action taken against

this measure; at what meeting, at what convention, or synod, or conference, where the official action was taken?

Mr. BOEHRIG. We had no special meeting for that purpose. We were all together, but we had no special meeting for that purpose.

Mr. DINWIDDIE. It was not official action, then?

Mr. BOEHRIG. I was asked to write about that at the last meeting, four weeks ago, and then we had a funeral and we were all assembled—all the members.

Mr. DINWIDDIE. It was not a regular meeting?

Mr. BOEHRIG. It was not a regular meeting—

Mr. DINWIDDIE. No official action taken.

Mr. BOEHRIG. But the members of my church sent in the petition.

STATEMENT OF REV. W. OESER.

Mr. OESER. Mr. Chairman and gentlemen of the committee, I am the pastor of a promising congregation in the city of Philadelphia; I have been the pastor of that congregation for the last fifteen years; I am a minister of the old ministerium of Pennsylvania, which a few years ago celebrated its 150th anniversary. I am a member in good standing of that old ministerium whose founder is well known, the reverend Mr. Muhlenberg. The gentleman who just spoke a while ago is a member of the same ministerium.

My congregation is entirely German. We are certainly law-abiding citizens, and we try and strive to uphold the laws of this land. But, nevertheless, we try to struggle against the passage of any such laws as this one now before the committee. We do not want to be restricted in anything which pertains to our personal liberty, and it is certainly a personal right to take into our houses and put on our table whatever we choose to eat and drink. Therefore, I am here to express the sentiments—and therefore, I say, I am heartily in favor of all the sentiments that were expressed by the speakers who have just spoken.

I have been in this country now almost twenty-five years, and I have labored among the Germans in the States of Nebraska, Missouri, Alabama, and Pennsylvania, and I know the sentiment of my countrymen. Although they are all good law-abiding citizens and Christians, they are nevertheless striving to retain freedom in their houses and homes, and to retain their freedom regarding their food and drink; and as a representative of those law-abiding and still freedom-loving people I stand here and I say "Keep your hands off and do not report this bill for passage." The Germans, the German-Americans, the law-abiding German-Americans will not look with favor on the passage of this bill, and will not be with you. That is all I have to say, and I thank you for your courtesy.

Mr. DINWIDDIE. At this point I will be glad to introduce Representative Scott, of Kansas, who will have all the time he desires before the committee in support of the bill.

STATEMENT OF HON. C. F. SCOTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS.

Mr. SCOTT. Mr. Chairman and gentlemen of the committee: I have not attended these hearings until I came to the room a few minutes ago, and I feel, therefore, as if I ought not to attempt any extended

argument upon the bill, for the reason that I should be very likely to simply cover ground that has been covered and make suggestions that have already been made more forcibly and clearly than I could make them.

I wish therefore primarily simply to appear as a representative of public sentiment. Of course I can speak for the public sentiment of no State except my own. You will all take notice of the fact that Kansas is a prohibition State. That law went upon our statute books in pursuance to the constitutional amendment more than twenty years ago. It has been seriously attacked a great many times. In fact, in nearly every campaign since that time one political party has arrayed itself against that law and another in favor of it, and the people have uniformly stood by the law for the past twenty-five years, showing that where prohibition is attempted the people approve of it. And it is as representing that sentiment that I wish to urge you to report this bill to the House.

Mr. HENRY. Mr. Scott, would it interrupt you to ask you a question?

Mr. SCOTT. Not at all.

Mr. HENRY. I would like to have you state substantially what the prohibition law is and what the exceptions to it are.

Mr. SCOTT. We adopted in 1881 a constitutional amendment forbidding the manufacture and sale of intoxicating liquors for any other except mechanical, medicinal, and manufacturing purposes. Those are the only exceptions. Various statutory laws have been enacted since then to carry into effect the constitutional requirement.

Mr. HENRY. That was the constitutional requirement?

Mr. SCOTT. Yes. I received this morning, Mr. Chairman—I give this simply as an illustration of the very numerous letters I have received on this subject, and which prompt my appearance here—a letter from the president and the secretary of the State Temperance Union of Kansas, inclosing the following resolution:

Resolved, That the Kansas State Temperance Union, in session assembled, respectfully request our Senators and Representatives to support the Hepburn-Dolliver bill now pending before the Congress of the United States.

The State Temperance Union, I may say, is a nonpolitical organization, simply of the temperance workers. It is not regarded as a prohibition organization, either. It is an organization of temperance workers of the State and as an evidence that its membership is not composed exclusively of cranks on the temperance question and men who cut no figure in any other matter, I wish to call attention to the fact that the president who signs this is Mr. F. C. Coburn, whose work as the secretary of the State Board of Agriculture of Kansas has been recognized not only in our own country but in foreign countries, and whose strength along that line has been recognized by his appointment as superintendent of the live-stock division of the Louisiana Purchase Exposition at St. Louis.

I said that I would not present an extended argument in favor of this bill, but I can not forbear inquiring why the committee should not report the bill. I am sure that enough sentiment has been shown to indicate that the country understands that this bill is pending before this committee, that the people who believe in temperance, particularly those who believe in the principle of prohibition, think that it ought

to become a law, and therefore it seems to me that the committee might well consider whether it would be justified in refusing to give the House of Representatives or the Senate an opportunity to discuss and pass judgment upon this bill. When it comes into the House it can be thrashed out, and I take it that the committee will not refuse to allow the majority of this Congress to determine a question of such importance as this.

And I wish to suggest also that this is not a question of prohibition, as has been suggested by the last two or three gentleman who have preceded me (the conclusions I have heard them state on the question); it is not a question of prohibition. As I understand the bill it will in no way affect the liquor traffic in States where it is not now prohibited. I do not understand that it will interfere at all with the personal liberty of the gentleman who resides in Pennsylvania, or the gentleman who lives in New York, or those living in any other State where a prohibition law is not in force. They will have the same rights, benefits, and privileges under this law that they have under any existing law.

All that this bill does, as I understand it, is simply to make any intoxicating liquor subject to the laws of the State into which it goes the moment it passes the borders of that State, and it seems to me there could be no objection to that. If we in Kansas choose to prohibit the sale and manufacture of intoxicating liquors, I ask with all deference, what business is it for the people in Pennsylvania or New York? That is our special concern. It seems to me that we have the right to insist that the people of other States shall obey the laws which we impose upon the people of our own State.

Mr. GILLETT, of California. May I ask you a question?

Mr. SCOTT. One moment, please; just allow me to finish this statement. It seems to me it is not a question of prohibition, but a question of comity between the Federal Government and the State Government. We do not allow our own people to manufacture and sell liquor. Why, therefore, should we let somebody come in from another State and sell liquor or manufacture it?

Now, Mr. Gillett.

Mr. GILLETT, of California. Have not you already, under the police powers of your State, the right to absolutely prohibit the sale of liquor in your State, independent of this law?

Mr. SCOTT. As I understand it, the lack in the present law, which this bill seeks to remedy, is that under existing legislation the State laws can not touch any liquor that comes into the State until it has gotten into the hands of the consignee.

Mr. GILLETT, of California. Yes; that is right.

Mr. SCOTT. As I understand this bill, it proposes to give our State the right to seize that liquor whenever it passes the border of the State, no matter whether it is in the hands of the consignee or not.

Mr. GILLETT, of California. How many States besides Kansas are there to-day in which there open saloons and liquor being sold over the bar?

Mr. SCOTT. I would not confess that that had anything to do with this question.

Mr. GILLETT, of California. I would like to know as a matter of information.

Mr. SCOTT. As a matter of information I am willing to say that all

the larger cities of Kansas, with the possible exception of Topeka, the State capital, have saloons more or less open. The law is very generally enforced in the smaller towns of the State. It is very generally violated in the larger towns.

Mr. GILLETT, of California. It is not violated in the larger towns because the sentiment of the people is not in sympathy with it?

Mr. SCOTT. Undoubtedly that is largely the reason for it.

Mr. GILLETT, of California. Would you want further legislation then to carry out your laws when you are unable to carry them out as they exist on the statute books?

Mr. SCOTT. We insist that the Federal power ought to help us rather than to hinder us.

Mr. GILLETT, of California. It can not help you enforce the police powers.

Mr. SCOTT. They can take the obstacles out of the way.

Mr. GILLETT, of California. Is this an obstacle in the way of open saloons in Kansas now?

Mr. SCOTT. Undoubtedly one of the obstacles in the way of the enforcement of the prohibitory law is the fact that brewers and distillers from outside States can maintain a warehouse in there.

Mr. LITTLEFIELD. A depot for delivery?

Mr. SCOTT. A depot of supply. They have one in my town where they can send their liquors, and we can not touch those liquors until they get into the hands of the consignee. I maintain therefore that the Federal law as it now exists is an absolute obstacle to the enforcement of our own police regulations.

Mr. LITTLEFIELD. That liquor can not be sold until it does get into the hands of the consignee, can it?

Mr. SCOTT. It can not be delivered, but it is very much harder to trace it after it is delivered to the individual than it is to trace it to the point of release, where a cargo or two may be stored.

Mr. THOMAS. Is it not a fact that in Kansas intoxicating liquors are transported from other States through the express companies, and that they are stored in the express offices, and delivered from those offices to anyone who will come in and pay the freight and charges?

Mr. SCOTT. A very common practice has been to have packages containing liquor consigned to a certain individual. Then a day or two afterwards, or perhaps the same day, the express agent will receive a letter saying that a package consigned to John Smith will not be called for by him, but may be delivered to anyone who will pay the charge.

There has been a great deal of that kind of work done; so much so, in fact, that in a great many cases in Kansas express agents have been arrested under the State law for the sale of intoxicating liquors, charged with the sale of intoxicating liquors, and the express agents, those who do not like to handle this sort of business, are very greatly annoyed by it and are put to expense and to shame on account of the manner in which the business is handled by those outside the State.

I am taking more time than I feel I am warranted in doing, because I did not come here especially to make this argument; but in conclusion I simply wish to emphasize what I have already said, that the people of Kansas undoubtedly have a right to the aid of the Federal Government rather than its opposition. They have a right to enact such laws as to them seem good, and the House of Representatives

has a right, in view of the widespread popular interest in this measure, to have it brought before them in order that they may give it the consideration to which its vast importance entitles it.

I thank you very much.

Mr. HENRY. I would like to ask you another question. Does the United States issue internal-revenue license to any of these saloon keepers in Kansas?

Mr. SCOTT. Oh, yes; the saloon keepers in Kansas are very particular to secure a United States revenue license before engaging in business; and in that connection I wish to say that if I could control the legislation of this House I would not only report this bill, but I would report another bill by which I would endeavor to prevent the sale of United States revenue license to a man who intended to engage in the liquor business in the States where it was prohibited. Of course I understand that is another question.

Mr. HENRY. I think you are laboring under a slight misapprehension. The United States does not issue a license and never did; simply a receipt for the payment of the tax.

Mr. SCOTT. I understand that perfectly well. We use that for convenience.

Mr. LITTLEFIELD. There is an express provision in the statute of the United States that it shall not be used directly or indirectly to authorize a sale, and, more than that, it could not.

Mr. HENRY. But it makes it permissible—

Mr. SCOTT. It makes it permissible.

Mr. HENRY. I do not understand that it has any local effect on its consideration whatever.

Mr. SCOTT. And if you will pardon me, if a man who engaged in the liquor business in Kansas was not allowed to pay the tax levied upon a retail dealer he would not receive the receipt for that tax, and in the absence of the receipt for that tax he could be prosecuted under the Federal statutes, and we would therefore have the aid of the Federal laws instead of the opposition. I understand that is entirely aside from the purpose of this bill, and I will not take up the time of the committee to discuss it.

Mr. HENRY. But you were speaking of the impediments that the United States put in the way of the enforcement of your law, and I think it is very pertinent here to inquire about this.

Mr. BRANTLEY. Is it not true that if he does not pay the United States tax that he has two penalties to meet—one from the Federal Government and one from the State government?

Mr. SCOTT. That is the point exactly.

Mr. BRANTLEY. And if he pays the United States Government, have you not an additional way of getting at who is violating the State law?

Mr. SCOTT. Our law provides that the possession of the United States revenue receipt shall be regarded as *prima facie* evidence of intention to violate the law.

Mr. HENRY. You are helped in that way to enforce your State laws.

Mr. SCOTT. I am very much obliged to you.

Mr. DINWIDDIE. What is the pleasure of the committee this morning? Does the committee desire to take a recess at half-past twelve?

The CHAIRMAN. Yes, sir.

Mr. BARTHOLDT. I would like to have five minutes for Dr. Mary Walker.

STATEMENT OF DR. MARY WALKER.

Dr. WALKER. Mr. Chairman and gentlemen of the committee, they have had a kind of Methodist convention before they went on to say what they desired to say. As a woman I must follow in the track of my betters, the men.

Now, I am a total abstainer. I have been all my life. I have been a temperance advocate; I have written temperance articles; I believe in total abstinence. I wish that everything that can intoxicate could be, by some miracle, thrown right out of existence, so that no one could become intoxicated, so that no one could use any sort of wines, liquors, or beers. But it seems to me, Mr. Chairman, that there is only one question before your committee, and that is, if you undertake to pass such a law, can you enforce it?

Now, Mr. Chairman, every law is weak, every law is inefficient when there is not a public sentiment to enforce it, and when it is impossible to have officials, a sufficient number over the United States, to enforce such a law. Now, I make this one point. I hope you gentlemen will not pass a law that every intelligent man on this committee knows can not be enforced.

Mr. DINWIDDIE. Mr. Chairman and gentlemen of the committee, I will have an opportunity to review and sum up at the conclusion of the hearings, but just now after the remarks of Representative Scott and the questions that have been raised in connection with the matter of interference by outside parties with the proper enforcement of the proper police regulations of the States, and to show some reason why this legislation is necessary and desired, I want to call attention at this particular time to a circular which I have in my hand, which possibly better than any words of mine or anybody else can illustrate what we are attempting to overcome. I hold in my hand—and I very much regret that Mr. Shirley, of Louisville, is not here, in view of his representations to the committee yesterday—a circular issued last November by Crigler & Crigler, of Covington, together with accompanying matter that was sent out to express agents throughout the country, relative to their taking the agency for the whiskys distilled by this firm. The letter will speak for itself.

(Established 1871. Crigler & Crigler, distillers. Woodland sour mash whisky.)

COVINGTON, KY., November 5, 1903.

EXPRESS AGENT.

DEAR SIR: The holiday season and the few weeks preceding offer an excellent opportunity for the sale of Woodland whisky. This year we are making a special effort to assist our representatives to secure orders by giving away free to all customers our holiday book novelty, which contains a half pint of Col. R. L. Crigler's private stock whisky, twenty years old. As per inclosed circular this novelty will be placed in every package of four quarts or more shipped before January 1.

Special holiday offer; \$95 commissions paid on 100 gallons sold as follows:

Regular commission	\$50
Special commission	15
Suit clothes, valued at	30
Total of	95

We will also make this unprecedented offer. To any express agent who sends in orders between November 10 and January 1, amounting in all to 100 gallons, we will give an extra bonus of \$15 in addition to the regular commission of \$50, also an

elegant suit of all-wool clothes, made to order, valued at \$30, making a total of \$95 you will receive for sale of 100 gallons—a commission equaling 95 cents per gallon. The book novelty which we offer as an extra inducement to customers will be of great assistance in making sales. Your position as express agent puts you in touch with those who use good whisky and send away from home for it, therefore, you should be better able with a smaller amount of effort to secure orders than anyone else. Knowing you to be reliable we will extend you credit and charge to your account any orders you may wish, or will ship anyone whose account you may guarantee.

We inclose circular of our Christmas Club offer whereby we ship 5 gallons of Woodland for the price of 4, on condition that cash accompanies the order. Your commission on this shipment will be \$2, and each one will credit you 4 gallons toward a 100-gallon sale.

In order to save express charges, with the first shipment of 4 quarts or more going to your town, upon receipt of the inclosed card we will send you for sample purposes, absolutely free, 1 full quart of 12-year-old Woodland.

Orders are best secured by personal solicitation, but if you will give us the names of whisky users in your locality (omitting merchants) we will solicit their holiday order and send them circulars of the Book Novelty. Any orders received will be placed to your credit.

Circulars descriptive of the Book Novelty and other stationery needed will be mailed you promptly on request.

Hoping to receive an early reply and trusting you will take advantage of our liberal offer, we are,

Very respectfully,

CRIGLER & CRIGLER.

GET UP A CLUB AND SECURE FOUR QUARTS WOODLAND FREE.

To anyone who will get up an order among their friends for four gallons (16 quarts) and send us fifteen dollars (\$15) cash with the order, we will give them free, besides the 16 quarts, four quarts extra, making a shipment of five gallons (20 quarts) for the cost of four gallons, shipped by express, all charges prepaid, in one large box free from marks to indicate contents. The box will include the assortment here illustrated.

For \$15 cash with order.

Holiday club offer will be sent to anyone before Jan. 1, who sends the amount \$15 with the order, and consists as follows: 15 full quarts 12-year-old Woodland whisky; 5 full quarts old private stock, twenty years old; 5 book novelties, each containing one-half pint old private stock; 5 whisky glasses and 5 corkscrews. The club order complete contains five gallons of whisky besides the five half pints private stock whisky.

For \$15 cash with order.

Use order blank on other side and give names of those who will secure part of the shipment. This club offer, which expires January 1, will not be sent C. O. D., but only to those who send cash with the order. This price is net; no discounts or deductions whatever from this price.

CRIGLER & CRIGLER,
Distillers, Covington, Ky.

SPECIAL OFFER.

To any representative sending us orders between November 10 and January 1 amounting in all to 100 gallons we will give—

	Per gallon.
Regular commission	\$0.50
Special holiday commission15
Elegant suit of clothes30

A total commission of95

Equivalent to \$95 for 100 gallons.

The suit of clothes is of all-wool material and made to order by H. Eilerman & Sons, the largest merchant tailors in Covington, with whom we have a special yearly contract to supply us with the best they can make. They will send you measurement blanks with full instructions, and as many samples as desired to select from. A perfect fit is guaranteed. We can refer to agents who have secured suits, and they will gladly tell you of their high quality and fit.

This is the most remarkable offer we have ever made to further the sale of Woodland, but it is our desire to have representatives make all the money they can during that period of the year when everyone will use more or less whisky. As an extra inducement between November 10 and January 1, we will give each customer gratis with every shipment of four quarts or more our book novelty, which contains one-half pint Col. R. L. Crigler's old private stock whisky, twenty years old.

Our regular commission is 50 cents per gallon, and the 15 cents addition and suit of clothes are only given on the following conditions:

1. That orders for 100 gallons must be sent in between November 10, and January 1.
2. This extra commission will only be paid to those whose orders amount to 100 gallons during this time. On less quantities only the regular commission of 50 cents per gallon will be allowed as well as premiums from list A as heretofore.
3. This offer holds good only to January 1, and no longer.

CRIGLER & CRIGLER,
Distillers Woodland Whisky, Covington, Ky.

Free, our holiday novelty free! With every case of Woodland, shipped before January 1.

This novelty book will be placed in every case of Woodland whisky consisting of four quarts or more shipped before January 1. The novelty is in exact imitation of a real book, made of heavy cardboard, bound in cloth, with title, etc., lettered in gold, and will deceive the most observing. Upon opening the book you find, instead of dull reading matter, a very active half pint of Col. R. L. Crigler's Old Private Stock Whisky 20 years old, labeled in appropriate holiday style. This book and bottle of whiskey will itself make an elegant Christmas present and a great deal of sport may be had with it during the holidays.

Price list of Woodland whisky, 12 years old, by express, all charges prepaid:

Four full quarts, \$3.85; 6 full quarts, \$5.75; 8 full quarts, \$7.65; 12 full quarts, \$11.50. Shipped C. O. D. where express companies will deliver that way. Three per cent off these prices for cash with order.

May I ask that I have the opportunity to insert this as a part of the record?

The CHAIRMAN. You may have that privilege.

Mr. DINWIDDIE. Mr. Chairman and gentlemen, I desire to introduce Mr. William C. Lilley, of Pittsburg, the chairman of the permanent committee on temperance of the Presbyterian Church of America.

STATEMENT OF MR. WILLIAM C. LILLEY, OF PITTSBURG, PA.

Mr. LILLEY. Mr. Chairman and gentlemen of the committee, I am a business man. My name is Lilley, William C., and I live in Pittsburg. The Presbyterian Church in the United States is a delegated body. It convened last year in the city of Los Angeles, Cal., and it had 680 delegates, equally divided between ministers and laymen. These laymen are ruling elders; that is their official title. Thus composed, it is, under our church government, the highest court of our church and the appointing power in the body.

The unit of this general assembly is the individual church whose pastor and one layman (or elder) represent it in a lower court called the presbytery. For every 24 ministers enrolled in the presbytery, two men, one a minister, and the other a layman (or elder), by a vote of the presbytery are entitled to a seat in the assembly.

But the conduct of the business and the various interests affecting the church may be properly cared for; there are ten permanent boards and committees created by the assembly, giving each a specific duty to perform, and in the interim of the meetings they are to speak for the whole church on the matters relating to their several departments. One of these agencies is known as the general assembly's permanent

committee on temperance. It is composed of 12 members, 6 of whom are ministers and 6 elders.

They are charged with the duty of ascertaining the mind of the church on all matters relating to the question of temperance. They do this in two ways. First. By placing a man in each Presbytery charged with the specific duty of ascertaining the minds of each church in the presbytery; he is known as the chairman of the standing committee of the presbytery. Second. Each individual church is covered by a body of elders who with the pastor is called the session of that church, and one of their number is designated as the chairman of the committee on temperance in that church. This chairman in the individual church reports to the chairman of the presbytery. The chairman of the presbytery reports to the general assembly's permanent committee on temperance.

At the annual meeting of the assembly held in Los Angeles last May the communicant membership of the Presbyterian Church in the United States was 1,067,477. Of this number 22,345 were officials known as elders, and in addition to that, 7,705 were ministers of the gospel under commission by this assembly. In addition to these persons organically connected with the Presbyterian Church of the United States is a Sabbath-school membership of 1,076,477, of whom at least one-half, or in round numbers 500,000, are children not in communicant membership, but for whose spiritual oversight and moral conduct the Presbyterian Church is responsible, making a total in round numbers of 1,700,000.

Now, Mr. Chairman, I have taken your time reciting these facts relative to the membership and the form of government of the Presbyterian Church that you may know somewhat of the constituency that I have the honor to represent before you this morning, and how I have derived my authority as a member of the general assembly's permanent committee on temperance, of which I have the additional honor of being chairman, to speak for these 1,700,000 souls.

In response to the direction of the committee, and on behalf of a large number of the chairmen of standing committees in the presbytery, I have come to pray for speedy passage of this bill. I shall not take up your time in arguing the question in its legal, moral, or economical phases, further than to say that I am in full accord with all that has been placed before you along these lines by the friends who seek the passage of the bill, and to call your attention to sides of this question that affect the large constituency that I am here to speak for.

I am here, sir, this morning under the shadow of a great sorrow. Thirty-five years ago in a small town in a small church in western Pennsylvania six young men banded together to do Christian work. Two of them went into mercantile life, two of them went into manufacturing life, one went into the ministry, and one went into the practice of law. Yesterday in the city of Philadelphia I helped to lay away the preacher, having traveled 400 miles to perform that service, and, sir, I stand before you this morning the last of those six men. The mortuary record of the city of Philadelphia shows that that preacher died from pneumonia, and I take it that is true, but I want to say to you, sir, that he died of a broken heart; that was the real cause of the man's death, a broken heart.

One week ago to-day that beloved minister of the gospel was called upon to part with his brother, his only brother, and the record in his

case shows that he died of brain fever. Mr. Chairman, I know that man died of maniaapotu, and, sir, the liquor that brought about that death was bought in a town where, had this bill been in effect, it could not have been purchased. I am here to-day to plead for two widows and for six fatherless children made so in four days from each other by this awful traffic. I come, sir, to plead the cause not only of those who still live and of the families represented by the Presbyterian church, but in the name of the dead I ask for the passage of this bill.

I am a business man, Mr. Chairman. For twenty-five years I have been engaged in the manufacturing business, and I had as an associate a man whom you call "one of the boys." Until the day of his death he had one redeeming trait. He loved his mother. Almost every Sabbath day he took his dinner with his mother. One day he went as usual to his mother's dinner, and during the course of the conversation his mother said to him, "John, I see Mr. Lilley has an article in the paper this week on the temperance question," and he straightened himself up in a comical way—I can see him now, and he can do it very effectively—and he said, "What does he know about the temperance question? I will bet he was never drunk in his life, mother. If that was me, I could give him some pointers." "Yes, John, you could, you could; you have given me many a heartache, and you have cost me a great deal of money."

Mr. Chairman, the 1,700,000 people that I represent here this morning represent heartaches, and whether we will or not, we have to help pay the bill.

I do not believe that the passage of this bill will wholly remedy these matters. I do believe that a measure of relief will follow in the wake of its passage. Therefore, in the name of the Presbyterian Church in the United States of America, representing more than 1,700,000 people, I have come at this time to pray that you recommend this bill for a speedy passage.

Mr. Chairman, I greatly appreciate the opportunity that you have given me to present the claims of my constituency, and I have sought to take as little of your time as was consistent with the importance of the case that I believe to be before you.

Mr. DINWIDDIE. I should like to introduce Rev. Dr. C. F. Winbigler.

STATEMENT OF REV. C. F. WINBIGLER.

Mr. WINBIGLER. Mr. Chairman, I feel somewhat of a hesitancy to stand before you and talk on this question, for several reasons; not because I am not in sympathy with it; not because I do not believe that the law should be enacted and carried into effect; not because I do not believe it is a just provision; but when I was considering this matter this morning, I said to myself what reason could be urged for the nonpassage of this bill, what legitimate, legal, righteous reason could be filed against the passage of this bill? I have been reading some of our church papers recently. If you know anything about the constituency of the Baptist denomination, you know that each church is independent of every other church. We are congregational in the form of government, but yet the consensus of conviction of the Baptist denomination is usually published in the Baptist papers throughout the country, and is voiced in the Baptist associations and in the large meetings, as we call them—the May meetings.

I am very sure that the Baptist denomination is right on this question and is in sympathy with the inauguration of a law of this kind to protect the people in States where they have prohibition and to prevent the encroachment upon that law and prevent the violation of that law. In our associations there have been expressions made concerning this and similar matters, and our people are very definite on the matter of the liquor traffic as a general thing, and they are very specific on this special thing.

I had a thought like this when I was coming up here, and since I have heard this speaker I have been surprised at a paper of this kind (referring to the printed letter of a liquor firm read aloud by Mr. Dinniddie) being sent to prohibition States and to men who are officering express companies, that they should be solicited to become agents, and practically to violate the law and to make it ineffective in those States.

And yet, I have realized, too, that if there could be any statement made as to why such a thing as this should not become a law and should not become operative in prohibition States, that there must be a reason back of it, and the only reason that I can see and infer is that it means simply a violation of the law that has been passed in that State.

You heard what the gentleman who spoke to you about the Presbyterian body said. I can say practically the same thing in regard to the Baptist denomination, although we are not governed, as you know, as they are, and possibly we can not get the concensus of conviction as they have gotten the concensus of conviction in that body; but I believe that if the voice of the Baptist people of the United States could be gathered and could be uttered here today it would say unanimously, let this provision become a law, so that the people in the respective States shall not be interfered with in the enforcement of their laws. One thing struck me——

Mr. LITTLEFIELD. Your denomination is one of the largest in the country, is it not?

Mr. WINBIGLER. Yes, sir.

Mr. LITTLEFIELD. The second or third after the Catholic Church, I think.

Mr. WINBIGLER. Yes, sir.

I remember also this morning of reading a little pamphlet I received in which there was some discussion on the floor of the House of Representatives concerning what is termed the C. O. D. provision. Of course that means to collect on delivery, but I did not know but what it might mean something else; that it might have an application, for instance, to a violation of the law; that it might refer particularly to men who do not care anything at all about the Christian and the temperance sentiment of the country, and especially in the States where prohibition has become an actual fact and an actual law.

I have been surprised at what has been said here this morning by a gentlemen who was speaking when I came in; how, in Kansas, this law has been violated. It has been an eye opener to me. In fact, if you will allow me to speak frankly and plainly, as is my custom to do, I can not see any reason for the opposition of this provision to making it a law, unless there is a purpose in the hands of the men that have been carrying on the liquor traffic in the country to violate the law that is passed in the States that have prohibition. If I were to make an inference, I would simply make a larger application of it and say

that it is in line with the whole business. It is a lawbreaker, inimical to the best interests of the country and runs in direct opposition to legitimate business of the country. The same old story of the past is told in the opposition of the provision.

I want to say not only that the Baptists are in favor of the passage of this bill, but in favor of any provision that may enforce the prohibition law of the respective States, but we think that the moral sentiment of the country will also be helped in this respect.

There has been an idea going abroad that in Iowa and Kansas, and in Maine, and even in counties that have prohibition, that the law is continually being violated. But let me say that the law has been violated, I think, because men have been ever ready to put their agencies into those places and have violated the law in opposition to the law that has been passed and recorded on the statute books of those States. It is not because the people are violating the law; it is not because there is such a wonderful demand for those things, but it is because this matter has been clandestinely carried on, and clandestinely permitted, and clandestinely pushed in the face of the people that have been drinkers, and thus the law has been violated by virtue of the initiative on the part of these persons and these representatives.

And let me say again that I think it is no more than right that the States that have prohibition should have Federal cooperation and sympathy, and at the same time have fortification and help. The United States, of course, is not, I understand, in partnership with this traffic. I understand something about the license, what is termed the \$25 license fee, that it does not give a license to sell liquor, and so on. But many men understand that it does. But if the United States will put itself on record by law, and by such an enactment as this, they will wash their hands from the stigma and the thought that they encourage this business; it will settle it and enable the States to carry out their laws. I hope this will be carried, and I am sure if the Baptist denomination of the United States could speak for itself this morning, and if I could voice the sentiment of the denominations, that they would say aye to this provision.

Mr. BARTHOLDT. I would like to introduce Mr. Obermann.

STATEMENT OF MR. G. J. OBERMANN, OF BALTIMORE, MD.

Mr. DINWIDDIE. Whom do you represent?

Mr. OBERMANN. I represent myself, and talk for the brewers.

Mr. DINWIDDIE. I would be glad to have the gentleman state that.

Mr. OBERMANN. Certainly. At the outset, I am requested by Mr. Dinwiddie to confess to the fact that I am a brewer, and I therefore make that statement. I am quite sure I will be borne out when I say that this is the first time before a committee of Congress or anywhere in a public meeting that a brewer has for himself answered the prohibitionists.

We have been quiet; we have been long suffering, fully confident, and in full knowledge of the fact that we have been maligned and our product has not been understood. We have been assailed by meddlers; we have been assailed by impractical men, not in touch with their fellow-men, and who do not know and do not seem to understand that we, the brewers (and at the statement I am about to make I expect our friends on the right to smile), are a greater temperance factor

than they will ever become. It is an acknowledged fact that as fast as the consumption of malt liquor increases the consumption of spirituous liquor decreases. I had not expected to say a word, Mr. Chairman, and I say what I do without any conference whatever with the few gentlemen who are my colleagues who are here to-day, and I fear that they will resent it that I speak at all; but the last gentleman who spoke prompts me to say a word or two. I will not make a speech; I never made one in my life; but I really begin to think it is easy.

Mr. PALMER. You are doing pretty well; go on.

Mr. OBERMANN. It is probably a little bold on my part, and it is unusual, as I stated before, to have a brewer address you, but the moose is as glad to see you as you are to see the moose. I would tell you the story, but I understand that the story has been appropriated by the distinguished gentleman from Maine.

Mr. LITTLEFIELD. Yes, that is my story, and it is quite a good story.

Mr. OBERMANN. Very good indeed, sir.

You are asked, gentlemen; the Congress of the United States is asked, by these gentlemen who have come here, to help them. They say practically, "Help me, Cassius, or I sink." The seed of prohibition has everywhere fallen on barren soil.

That has been so since the garden of Eden, and will continue so until the end of the world. You can not by legislation bring people to morality. That must be taught. Gentlemen, I am a temperate man. I believe in temperance. I have attended temperance lectures, and I honor every man and woman really sincere in his or her belief that there should be no intoxicating liquors sold or used, if they really believe that it results in the dire calamities they claim. But human nature is the same everywhere, and will assert itself in spite of impracticable restraints. Right over here in Virginia, after a long march, perhaps on a winter night, I have stood in line until my toes were nearly frozen, because that precious stuff whisky (precious because forbidden) was to be doled out to us.

And I assure you I wouldn't walk to the end of the table for the best drink of whisky anyone could offer me, because I have no desire for whisky. I was in Portland, Me., not long ago, and some one said to me, "Come here and I will show you where you can get a drink." I did not want a drink, although perhaps I looked as if I wanted one. It is against the law there, and so perhaps a lot of people drink who would not do so otherwise. I point to my native city of Milwaukee as a model city. There are fewer arrests there for drunkenness and disorderly conduct than in Portland. Portland is about one-third the size of Milwaukee. I can not prove that, but those are the statistics I have read, and they are very likely true.

Mr. LITTLEFIELD. I have been in both, and I might not agree with you. Still, that does not disturb me.

Mr. OBERMANN. The good people of the East who come to Milwaukee might perhaps hold up their hands in holy horror at the sinfulness of the city, and if they lived there a little while they would find that we have an orderly, law-abiding city, full of as good men and women as any city in the land holds, and that we are not going to the devil on a greased plane because we take a glass of beer when we want it. The great philosopher, Shakespeare, said to the world hundreds of years ago, "Dost thou think, because thou art virtuous, there shall be no

more cakes and ale?" Why, Mr. Littlefield, because there is a man up and down this long Pennsylvania avenue who may get drunk, is it right to forbid you and me from partaking of a glass of wine at dinner? It is ridiculous.

Perhaps what I say here does not enter into the question before you, but I have listened to more temperance and prohibition speeches for the last two days than I ever listened to before and I thought that possibly my colleagues and the committee would indulge me for just a moment. If the statements we have heard here could be verified, half the breweries would be closed up; aye, the brewers would close their establishments themselves, because they are good men and good citizens, and would not want to be in any such business. If you believe the advertisements we read nowadays of Postum cereal coffee, it would be the duty of Congress to prohibit the importation of coffee, if you should reason along the lines that our friends here, by their camp-meeting methods, are trying to make you reason.

According to these advertisements, coffee is a terrible poison. Lots of people believe it. Joseph Jefferson said to me not long ago: "I congratulate you; I understand your wife has given up coffee. I congratulate you upon her emancipation." He believed that. People get filled up with that sort of an idea, and their mission then is to become their neighbor's keeper. I will not let them be mine. Do you want them to be yours?

Maine, New Hampshire, Vermont, Iowa, Kansas, and one or two other Western States have passed prohibition legislation. New Hampshire and Vermont, I believe, have reformed. Iowa has its breweries. New Hampshire has her breweries at Portsmouth, and large ones, and good ones too, the entire time it was a prohibition State. You would, therefore, have had New Hampshire, with its breweries included, had the State not come to its senses, with Iowa and its breweries and Kansas with its wide-open saloons, saying to you, saying to Congress, in effect, "We are permitting breweries and saloons in our States; the people seem to want them; they are patronizing them."

Public sentiment in those States seems to prevent us from enforcing the law, and now we ask Congress to legislate for us, to take these special States under its wing and forbid the brewers from other States from selling any of our inhabitants any of their product.

I was in Des Moines, Iowa, about ten years ago, and I found in Des Moines 140 drug stores, and because the legislature in its wisdom did concede the fact that there were times when this terrible stuff, wine and whisky, might have to be prescribed by physicians, that there are times when it must be used to save men's lives. I believe the lamented Garfield was fed on wine a little while and his life prolonged thereby. And so they permitted drug stores to sell whisky when I was there.

I don't know whether I looked tough or not, but several told me, "If you want a drink, I know where you can get it," and to study the question I went the rounds. Des Moines had, I believe, a population of about 20,000, and it would have been amply provided with about 20 drug stores, and there were about 140. Most of them had dummy bottles arranged along the shelves and the prescription counter was the bar. They did a thriving business. Why? Because they had prohibited something there, and the people were bound to get it. The old story of forbidden fruit.

A man will take a bottle of whisky when he goes fishing because

there would be no place to get it if he wanted it while on his trip, and the chances are he would not take a drink, and yet if he did not have any and could not get any, he might want it.

These prohibition laws create hypocrites and make lawbreakers, and they will continue to do so, and you can not by law eliminate it; and you are not supposed to go into partnership with these people who are attempting the impossible. That is my theory.

Now, in addition, after you have got the State filled up with law-breakers and sneaks, you will make a lot of blackmailers; that is what you will do—always remember that. We can not put a keg of beer into a cracker box, or into such a package as was shown here. We have to sell our product in the open. So, as a matter of fact, the thing you people ought to favor is the very thing you are trying to prohibit. You are trying to prohibit the use absolutely of what the late Senator Sherman, on the floor of the Senate, pronounced a wholesome and pleasant beverage. The other will come in anyway.

The United States Government could prohibit the sale of liquor. All it need do is to refuse the wholesale and retail license it issues, and one United States marshal could do what my friends here admit the whole State full of officers can not accomplish. But Kansas winks at it. Kansas wants it. There are a few who do not. There are others who say never mind the saloon, we can get all we want to drink, we are our brothers' keepers. Public sentiment is against them and so they come here and say "Help us." "Enact a law that will not apply to the country, but to a few States in which we are interested." If they think they can carry out their peculiar views, if they can say to me as a temperate man: "We know a man who drinks too much, we know a father whose son drinks too much, and therefore you must not touch it," if that idea can ever be carried out—and I know it can not—but if it could be done at all, the only way to do it is by education. Henry Ward Beecher said: "If you tell me I ought not to drink, I may agree with you"—and I heard that sermon—"if you tell me I ought not to drink, I may agree with you; but if you tell me I must not drink, I will drink because it is my natural right." I have always thought that Henry Ward Beecher and Robert Ingersoll were good Christians. They were in touch with their fellow-men and were filled with human sympathy and genuine Christian charity.

The brewer of America is a temperate man, a good citizen, an enterprising man. The German brewer is a moderate and temperate drinker. He probably likes his glass of beer, and so gives evidence that he takes his own medicine. Pasteur, the great French scientist, after the French and German war, devoted years to investigating the manner in which the French people lived, and the result of his research is published and is on file in the Agricultural Department. He concludes that if his countrymen, instead of being absinthe drinkers and consumers of cheap wines, had been in the habit of drinking malt liquors, they might have been in a position to cope with the sturdy Germans. You ought not to sit here, gentlemen, and legislate against an article like that. Beer promotes temperance, and when drunk in moderation it is not as harmful as tea or coffee. Questions were asked here yesterday about the quantity of alcohol in beer.

Have any or you an idea that we put alcohol into our beer? We do not, any more than you, madam, put it into bread. Bread contains alcohol. The alcohol comes from fermentation. We take the extract

from malt, and probably some unmalted grain to make the beer light in weight and color, as most men and women like it better that way. Since the American men and women have commenced to drink it the business of the brewer has increased, and if the nervous and high-strung American women, and for that matter, the men, too, would drink this beverage it would benefit them. The phlegmatic German does not need it, but he likes it and he is entitled to it. Now, the very small percentage of alcohol in beer, about three per cent, is not enough to hurt, if drunk in moderation. Imagine any man or woman here drinking enough of that which is really ninety-seven per cent food, to injure the drinker. It is really an extract of malt and hops, and perhaps rice or corn (and when we use corn we use better corn than that you get on your tables). Let some one contradict that. We use corn better prepared.

Every bit of fusel oil is extracted—we could not brew with it if it was there. We extract the strength of that, and then what do we do? The first thing we know, gentlemen, I will teach you brewing business. We add some hops to take away the sweet taste, because if you have any trouble with your stomach the physician will not prescribe anything sweet. That gives it keeping quality. And then you have this awful stuff. These charges that you hear about adulteration of beer are so ridiculous, so assinine, when I tell you that the necessary ingredients to make good beer cost less than the adulterations we are charged with using. So that you can see how foolish these charges are. In the process of fermentation a little alcohol forms, that is all there is to it. When you see a drunken man on the street, you know that he has not been drinking beer, but in the vile stuff sold in prohibition States there lurks danger and death. And strange to say you see more drunkenness in prohibition States than anywhere else. Have you ever left Boston at night and seen the drunken crowd going out into suburban towns, Brockton and those places around there?

Mr. LITTLEFIELD. I never have. I have left there a good many times at night, but I have never seen it. I went with a crowd on the transportation train, too.

Mr. OBERMANN. Well, I have. Why is that? Simply human nature. Don't you fight it, because you will be beaten in the end as sure as God made little apples. And no legislation here will help you. Why is that? Because in their towns it has been forbidden them. They can not get it, but they want it; so they go to Boston and go to excess. You need not tell a girl in a candy store, "Don't eat too much candy." She won't, and can have all she wants, too. Let me illustrate this by coming nearer home and showing you how I feel and why I feel thus.

My wife is a Massachusetts lady of Puritan stock; an American lady. I am of German parents. When I went to Milwaukee to go into the brewing business, she said: "You are not going to put your little boys into the brewing business; you are not going to ruin them." "Well," I said, "my father called me there; I have been trained to obey. I have always been a good boy and obeyed my father, and I will obey now, but I promise you this, my dear, if you will leave the matter in my hands, at the slightest evidence of the boys being hurt I will retire from the brewing business, no matter at what cost." And I will tell you the course I pursued with them. I have kept them from wanting to drink because I did not prohibit it. If I had a bottle

of wine or beer on my table, when the boys got to be about sixteen, I would say to them: "Do you want a little wine; do you want a little beer?"

"No." I have it in my cellar and on my sideboard, and I will take an oath here that I have never known one of my boys to go to my sideboard for a drink of liquor, and I am sure I would have made drunkards of them if I had said: "No, no, this is for your father, you can not have any." What is the result of such a case? The moment they are out of your control they jump over the traces. That is where you get your drunkards. My course was to make them free moral agents. I trained them myself. I didn't call in the service of the police. I didn't make forbidden fruit of an article that, taken temperately and moderately, can harm no one. I have known men in the Army who have taken Jamaica ginger and that sort of stuff until it almost ate their insides out, because they could not get whisky. And so I say it is wrong; it is impracticable.

Gentlemen, I thank you.

(Thereupon at 12.30 the committee took a recess until 2:30 o'clock.)

AFTERNOON SESSION.

The committee reassembled pursuant to the taking of recess, Hon. John J. Jenkins in the chair.

STATEMENT OF HON. CHARLES Q. TIRRELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS.

Mr. TIRRELL. One of my colleagues from Massachusetts yesterday afternoon addressed the committee upon this bill. I was unable to be present, but from the report which appeared in the daily papers I judge that he took the same line of argument which the Congressman from Kentucky had previously taken at the same hearing, namely, speaking upon the constitutional features of the bill.

But inasmuch as he appeared as a representative of Massachusetts, and in the course of his argument may, perhaps unintentionally, have endeavored to impress upon the committee that the sentiment of that Commonwealth is averse to the passage of this measure, I desire to submit to the committee some interesting data which I compiled in our State less than a year ago, and to follow that up by what subsequently occurred in the legislature of Massachusetts itself, all having direct reference to the bill under consideration.

On the 21st of May, 1903, there appeared a broadside in one of the daily papers in the city of Lowell. The city of Lowell has a population of 75,000 people, and under our license law each city and municipality in the Commonwealth votes annually upon the question whether the sale of intoxicating liquors shall be permitted in the city or town during the ensuing year. Under the provisions of that law the city of Lowell voted no license, so that the city was under the operation practically of a prohibition law, most carefully and thoroughly drawn and supposed to meet the exigency of every case. Much to the astonishment not only of Lowell but to the Commonwealth of Massachusetts, creating excitement in every section of the State and commented upon by all its leading newspapers in article after article, not only editorially but containing the opinions of some of the ablest attorneys in the Com-

monwealth, appeared this broadside which I hold in my hand, which was an advertisement by one Charles H. Joyce, to the following effect:

Imported ale in original packages. Dawes & Co., India pale ale, quart bottle 35 cents, three bottles \$1. This ale is now on sale at our store. The only place in Lowell where you can buy ale legitimately.

Of course the question at once arose, under what authority of law were they authorized to sell pale ale, or malt liquors, for that matter, when they were acting under a prohibitory law of that State?

And it appeared—and they were acting under most astute counsel; one of the ablest lawyers in the commonwealth was consulted and they were acting upon his advice—that whereas under the Dingley bill of 1897 distilled liquors could only be sold in 10-gallon lots, and wines in cases containing at least 12 bottles in the original packages (for if they contained less they were taxed as a case containing 12 bottles, and therefore would not be imported in less quantities); that there was an oversight, whether intentional or not we do not know, and that so far as malt liquors or ale were concerned there was nothing in the Dingley law which determined either how many bottles or what quantity should make an original package; so that under that contention these people maintained that ale was put up in a quart bottle, a pint bottle, or less quantity, if it was put up in the original package—and that was a very simple and easy matter to do, for it could be put up in the same way that all these liquors are sent out from the stores and boxed, with the necessary imprint upon them—they maintained that that was an original package, there being no limitation of the number of bottles or the quantity, and therefore they had the right under the laws of the United States to sell ales and malt liquors in that way. Of course there began a discussion at once all over the Commonwealth of Massachusetts as to whether that legal principle was correct, and the justices of the district court were consulted and warrants were asked against these parties, and after very careful deliberation a justice of that court decided that there was no authority in Massachusetts by which that sale could be prevented; for, although the provisions of the Wilson Act of 1890 were well known, there was a section of the license law in our State which recognized and affirmed, as it were, the right of such a sale and the inability of the authorities to interfere with sales so made.

The excitement increased, and finally a petition was sent in to the Governor of Massachusetts and he was requested to obtain the decision of the attorney-general of our State as to whether there was any process of law by which the will of the people in the city of Lowell, which had voted against the sale of intoxicating liquors, could be carried out.

We have one of the most astute and brilliant lawyers in the Commonwealth of Massachusetts as our attorney-general at the present time, and he decided that there was no remedy unless the legislature of Massachusetts repealed that provision in our license law which affirmed, as it were, the principles of the Dingley Act, to which I have made reference.

Now, the point I am coming at is this: That although the time had passed in the legislature of Massachusetts when a new bill could be introduced, and it was requisite that a two-thirds majority of that body should assent before it could be done, that on the introduction of such a bill so unanimous was the sentiment of the State of Massa-

chusetts that such a nullification of the will of the people ought not to be permitted, and that the sale of liquor so made ought to be prevented, that members of the legislature of all parties with scarcely a dissenting voice, showing it was the almost unanimous sentiment of Massachusetts, allowed the introduction of that bill, and it went through its various steps of progress from house to senate in the course of two or three days.

That is not only indicative of how Massachusetts feels upon this question, but that the fact that there has been pouring in upon us an innumerable number of petitions representing men of all parties and all creeds and all beliefs upon this question in favor of the passage of this bill proves beyond controversy that its enactment would meet with the general approval of all parties in our Commonwealth.

I do not propose after the elaborate discussion which has been made before this committee as to the constitutionality of this measure to spend any time, except a moment or two, upon that question; but I would like to call the attention of the committee to this one fact.

I listened very intently to the subtle and able argument made upon the constitutionality of this measure by the gentleman from Kentucky, and if I remember correctly he was obliged, in response to interrogatories propounded by members of this committee, to say that after all it was an academic question he was discussing on his part and that decisions could be cited in which the positions maintained by him were controverted and those upon the other side were maintained. I have seen no reference here to the succinct and able report made by a gentleman of this committee in the Fifty seventh Congress, in which he lays down the law, citing from the decisions of the Supreme Court of the United States, sustaining the constitutionality of the Wilson bill and its modification, as desired by the bill which has been here introduced; nor have I seen any answer to this question, viz, that under the existing condition of things consignments are made to prohibitory States in large quantities, in original packages, to one consignee, and that consignee retails those liquors in those communities not only in a retail manner, but in a wholesale manner also.

And those who are familiar with the discussion of this question when it was in charge of the chairman of this committee in the Fifty-seventh Congress will remember that there was one case cited by Judge Smith in his own county where one consignee received at one time 100 different jugs of liquor, which were retailed out in his community, and for which, unless this bill should be enacted into law, there would be no remedy. That is only one case in one State.

There are thousands of such cases all over this country, and it is to meet these cases and to provide, as unquestionably the law authorizes to be provided, that the States which are acting, either in whole or in part, under prohibitory laws shall have the right under the police power which the Supreme Court of the United States has given them to reach such cases as these; and unless this bill is passed the will of the people of our State to have this power-of-police regulation granted to them will be powerless to prevent the repetition of such actions and the sale of liquor in original packages, because if they can not be touched until after they reach the consignee they can not be touched at all in those cases where they are delivered to families; for when a man gets into his own house a jug of liquor so delivered, as it can now

be, who is there that can step in and say he shall not have the right to use it?

Therefore, Mr. Chairman and gentlemen, with these considerations, I do not desire to take up more of your time.

Mr. PALMER. Mr. Tirrell, the real question in this case is whether it is wise for Congress to surrender to the State a portion of its power over interstate commerce. As you are a lawyer, an eminent one, and a good one, I would like to hear your views on that subject.

Mr. TIRRELL. I have not made a special study of that, but I wish to say that in the case cited by Mr. Clayton in his report last year, the case of *Rhodes v. Iowa*, if I understand the majority of opinion in regard to the effect that the Wilson Bill of 1890 had, taking all its phraseology together, the reasoning of the majority of the court is very ambiguous.

It says you must not take any one word out of that bill; you must take the whole bill together and consider the last sentence with the first sentence; and considering it that way that the word "arrive," which was in that bill, meant after it got to the consignee, and that is substantially all that the majority opinion does decide. Now, there was a minority opinion in that case, and that minority opinion was signed by Justice Gray and Justice Harlan and Justice Brewer, and in that minority opinion—

Mr. PALMER. Which case do you mean, the *Rhodes v. Iowa* case?

Mr. TIRRELL. Yes, sir.

Mr. PALMER. It was Justices Gray, Harlan, and Brown.

Mr. TIRRELL. Justice Brown, instead of Brewer, yes. In that minority opinion all the cases are reviewed, case after case, and they lay down the doctrine emphatically that the Supreme Court of the United States has repeatedly decided in analogous cases that that is not the proper interpretation to give to the word "arrive," but that the moment liquors pass over a border of a State then the law of the State becomes applicable. I think anyone who will read the minority opinion must come to the conclusion that the vast weight of authority is that way.

If I understand it, it is this way: That the majority opinion in that case did not decide this question at all; it decided a particular case, and from the phraseology of the act taken as a whole they came to the conclusion—a majority of the court—that "arrive" meant in that case when it got to the consignee. And it is to meet that case, and all of the cases, and to bring all of the cases which had been previously decided where this matter had been in controversy before the Supreme Court, into the same line of decisions which are quoted innumerable in the minority report, that this bill has been presented.

STATEMENT OF MRS. FERNENDE RICHTER, ST. LOUIS, MO.

Mr. RICHTER: Mr. Chairman and gentlemen of the committee permit me to present to you a petition which is signed by thousands of American women, of whom a great many are of German descent. There are some more petitions coming in, and I beg leave to have them sent to you for your consideration.

The petition reads as follows:

The undersigned beg leave to submit a petition against the passage of the Hepburn and Dolliver bills. The passage of these bills would not only enable the State wherin we live to prevent us from enjoying a glass of beer or a glass of wine at our

tables, but it would also tend to estrange our husbands and sons from their homes, and entice them to places hidden from the eyes of the public and of the law, where we could not accompany them. We deem it our right to visit places of amusement and recreation with our husbands and children, and we believe that no man has the right to go anywhere where he can not take his wife and children with him. We deem it our right to select refreshments that we consider wholesome for ourselves and those we love. We believe that we are better able to lead our children into the paths of virtue and true temperance by the precepts of our mothers, than all the so-called temperance books in the country could do. Prohibition tends to destroy family life and happiness, deprives women as well as men of their individual right to eat and drink what they like, leads to secret vices, and allures husbands from their wives and homes. We, therefore, pray that our national legislators will not pass the Hepburn and Dolliver bills, nor any other prohibition measure.

We respectfully request you, Mr. Chairman and gentlemen, to consider very carefully any step that would help the prohibition movement in our Republic.

As we understand this bill against which we plead, it would prohibit the importation of intoxicating liquors and liquids into certain States. This implies a gross injustice to a very large number of your best citizens and a wrong attack upon our households.

In a community laws must be established to regulate to a certain extent the relations between individuals and to further their mutual interests. Laws are made to be obeyed. The law in question would be one made to be disobeyed. It will rob a man of a good friend—a glass of wine or beer after a hard day's work, to be enjoyed in his own home at his own table, amidst his own family. And would force him to endeavor to get what he honestly and sincerely believes to be his right—in spite of the law.

Consider the danger! For if he can not have his glass of beer or wine at his own table, because he can not buy it in his town or State, or buy it in any other State, to be sent to his home, he can easily smuggle in a bottle of most concentrated ardent spirits—a comparatively small quantity of which may serve as a poison for a whole family.

The bill now before you says a great deal more between the lines than its harmless words seem to imply by prohibiting the importation of intoxicating liquids.

What is meant by these terms? It is a well-known fact that a large number of patent medicines are sold all over the country, which contain even more alcohol than ordinary whisky does, and are used largely in place of intoxicating drinks by families in prohibition States. Such drugs are infinitely more harmful in every respect than beer and light wines. Should not this traffic also be prohibited?

Is it proposed to regulate the interstate commerce of alcohol? As long as that is not prohibited the proposed law will be a failure. For immense amounts of intoxicating drinks are manufactured by compounding, with commercial spirits as a basis.

Nobody claims that refreshments containing alcohol are under every and all circumstances injurious to the health of body and mind. They become so only by excess. Excess in all things must be avoided—also in legislation. Honey and candy eaten in excess are supposed to cause diabetes. Excess in meat is supposed to cause gout and Bright's disease. Drinking of beer and wine is supposed by our prohibition friends to create in some people an injurious habit; but so will cocaine and morphine and so-called liver pills. Should not, then, all such traffic be prohibited? Coffee and tea partaken of in excess are poisonous. Coffee or tea is nauseating to some people. Because coffee does not agree with my system, should my sisters in womankind be robbed of their favorite beverage?

Because a small percentage of men and women can not control their habits, must we all suffer? Because there are men and women and, more important still, badly brought up boys who ruin their health by smoking and chewing tobacco, should the traffic in tobacco be prohibited?

Do you expect to stamp out crime by removing all possible causes—as you would take a plaything from a child's hands? Would you make theft impossible by confiscating all property?

In this country a strong dislike against paternalism prevails; it is objectionable to every liberty-loving citizen of our Republic, which has become what it is through the self-control of its founders and sustainers. Should the aversion against paternalism not be even stronger? Maternalism is a form of government that was abandoned in prehistoric ages and should not be revived to initiate an historical age. We are not a nation of children to be governed by the slippers of mothers. This is a nation of men and women who are responsible for their use or abuse of liberty. Prohibition will deprive the people of that feeling of responsibility that is the strong-hold of wise education.

Every pedagogue worthy of the name understands that he can control a child better by placing the weight of responsibility on its young shoulders than by interdiction. Everybody knows that the word: "you must not" only leads to trying: "if you can not anyhow." Even in insane asylums, where mental childhood is treated, will the wise physician gain better results by awakening the feeling of responsibility in his poor patients than through the barbarous straight-jacket of forbidding.

Only crimes must be forbidden. Vices should be prevented by education. And Jean Jacques Rousseau, the great French philosopher, says: "Il n'y a point d'action humaine dont on ne peut faire un crime." (There is no human action that could not be made a crime.)

Prohibition is another form of tyranny, a restriction of mind and will. Should a highly civilized nation that fights any and all forms of tyranny return to this antiquated mistake? And will not prohibition breed one of the most contemptible of vices—hypocrisy; enticing men to do secretly that which they openly condemn? The dangerous old English "cant" should not be revived in our liberal country.

I do not speak against temperance, but against prohibition. I know this to be uncommon in a woman. For if anybody has to suffer under the effects which intoxication produces it is the wife and the mother; the daughter and the sister. Nothing compares in misery to the hell that rages in a home where drunkenness has a hold on any member of the family; and it is because we are aware of this—because some of us may have seen it—that we plead against the prohibition of light drinks on our tables which would signify the clandestine introduction of secreted drink—"the bottle of firewater hidden in the barn."

We German-American women spring from a race that knows the great joy of living—"die Lebensfreude." And this joy of living, this sense for the good things of life, this comprehension of the weighty factors in human life, laughter and recreation, is not the smallest gift Germany has made to our country through the good and law-abiding citizens it has sent us. We women know that the happiness of our homes—and I defy anyone to say that our homes full of children and their laughter, are not amongst the happiest in this country—depends to a large extent on this joy of living and the consciousness that man needs recreation from physical and mental toiling.

A man who has been working hard all day, no matter what his profession or trade, finds recreation by meeting his friends and congenial company after working hours. A woman who has been drudging all day in her household and with her children has also a right to such recreation. It is decidedly illogical to drive men and women into separate clubs to find entertainment. It lies in the interest of mothers and wives to share the diversions of men. The experience of centuries has proved that wherever families jointly frequent public places, where they meet good company, and where light drinks are served and good music is rendered, the moral qualities have been highest and the greatest happiness has prevailed. A man should not go where his wife can not go with him. The presence of the wife refines the ways of men. For where such a custom has not prevailed men have taken to indulging in strong liquors; and, not being restrained from excesses by the presence of pure women, easily fall a prey to other vices.

That beer and light wines, even if taken regularly by women, are conducive to their general health, is proved by the physique of the average German-American woman and her ability to do her duty to the family as well as to the State. Prohibiting all this, by not allowing the importation of beer and wine into our homes, will assuredly lead to the habit of imbibing strong liquors, and will create vices which lower the condition of not only the family, but also of the nation.

In an editorial on the suffocation of infants in bed by the overlaying of mothers or nurses, the well-known journal, "The Medical Record," of December, 1903, makes the following statement:

"In the last ten years England and Wales were deprived of 15,000 infants through their being suffocated in bed by their parents and nurses. * * * In France and Germany the mortality of infants, even in the great cities, from this suffocation, is gratifyingly rare. A very direct relationship seems to exist between the amount of drunkenness in women and this form of infantile death. A drunken mother on the Continent is almost an unknown sight. Indeed, throughout the wine-producing belt of Europe, it is well known that drunkenness is rare—padded cells and delirium tremens wards being almost without exception unnecessary. * * * With the increasing density of our population and a corresponding approximation of our conditions to those existing in England, it will be of interest for us to follow closely the course pursued by the British jurists in their efforts to limit this unjustifiable destruction of life. People have not only a natural right to recreation, but it is a

necessity for us Americans in these strenuous days, particularly so for the working classes, who are the bone and sinews of the nation. If you rob workingmen and working-women of their light refreshments at home you will undoubtedly drive them to the use of strong liquors and ruin their families.

We German-American women do not claim to know much about government, national laws, and regulations, except those which obtain in our own households, and some women may know more about practical politics, but Mr. Chairman, there is so much written and spoken nowadays about "home making" by club ladies, that you will permit me to say that we do not talk much of "home making" but we do it. That may be the reason why we are not interested in politics. But should women who do not vote influence voters? Are the women who plead for this law pleading for or against their own husbands and fathers? If a woman does not know how to share and regulate her husband's recreations and behavior, no law under the sun can assure her true happiness; for no fanatical crusade against the enjoyment of the good things of life and no forcible methods which eventually culminate in the mania of the reform hatchet and the anarchism of dynamiting saloons will give her a peaceful home.

The women whom I represent and who contend that they are as respectable as any know this and therefore do not drive the men of their families to drinking in secret.

Mr. Chairman and gentlemen, your constituents have elected you to represent their best interests, and I least of all intend to influence your decision, but I do most emphatically protest against a spirit of maternalism which tries to make you believe that it is your duty to regulate our households, and which emanates from what I sincerely believe is the minority of American women. A minority composed of women who have studied the question from a very narrow standpoint. But, be that as it may, Mr. Chairman, the rights of even a minority should certainly not be interfered with by a majority, nor vice versa.

To again quote Jean Jacques Rousseau: "Chercher son bien et fuir son mal en ce qui n'offence point autrui, c'est le droit de la nature." (Aiming for the good and avoiding the bad, in all things which do not harm others, is nature's right.)

Believe me, Mr. Chairman, we are not solely pleading for beer and wine, but for a broad moral principle which, if lost, will necessarily be a precedent for further invasions into the privacy of our families. I am not addressing you in the interest of the capital and labor employed in the production of beer and wine, but in the interest of what we women conceive to be true liberty, that liberty which American institutions guarantee and which should not be curtailed by laws like the one proposed. We plead for that liberty which makes our homes brighter and which does not interfere with the happiness of those who wish to regulate their lives differently, but whom on the other hand we will not permit to dictate to us how we shall live.

We protest against those who have come here purporting to be the sole representatives of womanhood—women who have clubbed together under any number of pretexts, not to assist the poor, nor to care for the sick, nor to console the orphans, but who have set up ideals of their own, in direct contradiction to the experience of all ages, and who now try to force their abstract impractical notions on their own sisters—not by teaching, but by insinuations; not by example, but by force; not by love and the spirit of kindness, but by coercion—by attempting to influence the legislators of our nation to do as they wish.

This, Mr. Chairman, is not the first time that women have been forced to defend the personal liberty of their husbands, which again seems threatened by man's courtesy to woman. We come here, not because we court notoriety, on the contrary, but to show you that the prohibitionists in petticoats do not represent all the women of our nation, and because we know that the pleading of women finds its greatest succor in the natural politeness of man, and chivalrous men only too often act against the plain and clear interest of the people at large by civility to the importuning of such women who claim politeness as a privilege superceding right. Courtesy to them, Mr. Chairman, would be tyranny to us.

Therefore, in the name of your petitioners who gave to the Union the best they could give, their sons whom they taught to battle for Old Glory even unto death; their daughters whom they taught to build up happy homes and to send forth sons and daughters that are a credit to our nation—in the name of these American women I do protest against any assault on the freedom of the individual and our happy homes!

Mr. DINWIDDIE. I will introduce at this time the Rev. S. E. Nicholson from Indiana, who will represent the Orthodox Friends, now of Harrisburg, Pa., who is also the general secretary of the American Anti-Saloon League.

STATEMENT OF REV. S. E. NICHOLSON, SECRETARY OF THE FRIENDS' LEGISLATIVE BOARD IN AMERICA, AND GENERAL SECRETARY OF THE AMERICAN ANTI-SALOON LEAGUE.

Mr. NICHOLSON. Mr. Chairman and Gentlemen of the committee: I very highly appreciate the opportunity of being allowed to speak a few minutes this afternoon in behalf of this Hepburn bill, and I am glad also of the privilege of being here in an official capacity. I think I ought to make that plain. I happen to be the secretary of the Friends' legislative board of the Friends' Church, representing a membership of 92,000 or 93,000 persons, and while we do not have a very large constituency as compared with the numbers presented this morning by my friend from Pittsburg, I am glad to believe that a large number of my constituency are counted among the best citizenship of our Republic.

It shall be my aim in what I have to say to touch the points that I consider are involved in this bill. I shall not take up your time, for instance, discussing the various astounding propositions that a law must not be enacted, because by psychological or other process it will compel people to violate it. To my mind, that is not in accordance with the American ideas of government. Nor shall I discuss the other question or proposition that has been advanced here to-day, that Christianity has nothing to do with the attitude of a legislative body or of the American people controlling a traffic which the Supreme Court of the United States has declared to be productive of crime, and of misery, and of insanity, and of pauperism.

Nor will I, if you please, take your time in discussing the merits or demerits of the prohibition question, for, to my mind, they are not involved in any particular in the bill that is now before this committee. And I beg to submit, without any intention whatever of reflecting upon the purpose or the intelligence of the opposition of this measure, in the arguments that have been made all over this country in getting these petitions that have been presented here to-day that the question has not been presented to them as it ought to have been, for I believe that if this measure had the effect or purpose of prohibiting intoxicating liquor in any State in this Union I would not be here advocating its passage this afternoon; not because I would not be in favor of that happy consummation, but because I do not think it would be within the probability that the Congress of the United States, at this time, at least, is going to take any such position on this question.

I take it that it is understood everywhere and accepted as a fact, both by courts and by legislative bodies, that the States of this country are guaranteed the right to deal with the liquor question by controlling it, regulating it, or by prohibiting it, as they may determine best suits their own needs. It seems to me that it ought to follow as a necessary consequence that if that right is guaranteed to the States they ought to be guaranteed the privilege of exercising that right without any interference whatever, even although interference might be the interstate commerce law of the United States, unless it can be shown that the guaranteeing of such exercise would be contrary to the Constitution of the United States, or contrary to the express purpose of the Congress of the United States. I take it that there will be no contention whatever as regards the powers conferred on Congress by

the Constitution, in that it is directly said in the Constitution that Congress shall have the right to regulate the commerce of the country, both foreign commerce and the internal commerce, the domestic commerce of the country. I say there will be no contention with reference to that.

It seems to me, Mr. Chairman, therefore, that there is only one point here—only one point in this bill—and that is the determination of Congress as to the time when it shall surrender, if you may use that term, the privileges that it now has under the Constitution to the States with reference to one article, of intoxicating liquor. It seems to me that is the only question Congress needs to be concerned about in this measure—the time when it may say to the States "You may have jurisdiction in the traffic in intoxicating liquors." I hope we will not get away from that in our discussion and in our thought upon this question.

I am sure that the committee will pardon me, if, in order to get at the right determination of that matter, I take just a moment or two to review some matters that, as it seems to me, have all been covered, perhaps, and yet we have been going over a broad ground to-day in discussion. It seems to me it is well for us to get back again to some of these things that we should keep in mind.

I am not a lawyer, and yet there are some principles of law that even a layman may undertake to have some views upon and occasionally expound. I find that for nearly fifty years, nearly half a century prior to 1890, it seemed to be the understood custom of Congress and of the courts to recognize the right of the States to have complete and absolute jurisdiction over the traffic in intoxicating liquors. A case was decided in 1847, a New Hampshire case, which made that very plain, and in a decision of Chief Justice Taney—I have not the reference here, but I can file that if it is necessary to be done—that was made very plain. In about the year 1888 a question arose, coming from the State of Iowa, I think, under the prohibition law of that State, which, by a series of decisions, lead up to the point of the Supreme Court taking a different attitude upon this question.

I may say that under the decision of Chief Justice Taney it seemed to be the decision of the Court that the State had absolute jurisdiction on the liquor question within the State, because Congress said nothing about the matter, and they took it for granted that in the absence of any legislation on the part of Congress the States therefore had this right. The decision, as I have said, was given by Chief Justice Taney, and that seemed to be held to from 1847 to 1888, when the question arose in a new form.

Through a series of decisions in two or three years, about 1888 and 1890, the court practically reversed that decision and took the position that because Congress had not said anything upon the question, and inasmuch as the Constitution conferred upon Congress the right to deal with interstate commerce, that therefore States had no rights in the matter in so far as interstate commerce was concerned, so that liquor, under that decision, could be shipped into a State and not only be delivered to the consignee but that consignee could in turn sell it to somebody else, provided it was sold in the original package in which it was received by the consignee.

Then arose the condition, which has already, I think perhaps yesterday, or a month ago, been detailed before this committee, of the

original-package houses that sprang up in many places in the country, which became a very great nuisance in the communities. There was a loud demand all over the country for some action on the part of Congress in reference to the matter, and more so because the Supreme Court seemed to have intimated that it was within the province of Congress to act upon this matter, that in the absence of any Congressional action certain conditions must prevail under the construction of the powers of Congress. Therefore, when this agitation reached a certain point in the year 1890 there was passed the Wilson law, with the terms of which you are familiar, and your attention has already been called to this measure.

I do this simply that we may get our thoughts concentrated on this bill. I need dwell upon the fact that it was evidently the purpose of Congress in 1890 to enact in the provisions of the Wilson bill just what is attempted to be enacted in this Congress by the Hepburn-Dolliver bill. I feel I can not emphasize that too strongly, even although I may repeat it. The discussions in Congress at that time—and I may say I have taken the time to go over this in part, not altogether, but in part—and I have been struck by the fact that the arguments in favor of the passage of the Wilson bill by members of Congress at that time were almost synonymous with the arguments that seem necessary at this time for the passage of this measure, and the conditions at that time prevailing were in large part synonymous with the conditions prevailing at the present time.

But, by an unfortunate expression in an act—because it said that the State jurisdiction should begin upon the "arrival" of the liquor, as the Congressman from Massachusetts has said—the Supreme Court in interpreting that gave this sort of decision in effect: That liquors could still be shipped into a State from another State and delivered to the consignee. The sole effect, therefore, of the Wilson bill was that consignee could not in turn sell it to somebody else.

I think reference has been made probably sufficiently to conditions that have grown up under that decision. The result is that in a community a number of packages will come to the station agent or to the express agent consigned, as I have been informed—I can not vouch for this from personal knowledge, but I have been so informed—to A, B, or X, or some other such name as that, and somebody will come in and say "I am A," or "I am X," and pay the C. O. D. charges and get the liquor. Or packages come in to be delivered to John Doe or John Smith, and somebody comes in and pays the charges and gets the liquor.

So that in many communities where the States have occasion to deal with this question, and have said to their own citizens "You shall not conduct a liquor traffic in our State," the result is under the Wilson act that persons outside the State, the wholesaler or the manufacturer, becomes a saloonkeeper for that State, and the express agent becomes a barkeeper, and the express company's building becomes the barroom for the transaction of that business.

Now, with that condition has grown up a condition which was similar, perhaps in many respects worse, than the condition that prevailed just prior to the enactment of the Wilson law. Then the question comes before this committee—and that is a question for you to consider, it seems to me—are you justified in giving relief to the States that will remedy the sad condition that has grown up?

There is the other question involved that I have intimated is the prominent question, and that is whether or not you will give by act of Congress the rights to the States upon this question that seems to them to belong to them; whether you will give to them the full exercise of those rights which the courts have already recognized are a part of their rights as States in dealing with this question. Just one or two other things I want to suggest. One is that if there were reasons why the Wilson law should be enacted in 1890, and the Wilson law was enacted, which relinquished part of the rights that Congress had under the law and under the decisions—that is, the right of a consignee to sell to some other person—then by virtue of that action is not the present Congress fully justified in passing an additional act which will fix the time a little more conveniently for the State in dealing with this question?

The precedent has already been set so far as Congressional action is concerned in the passage of the Wilson law in fixing the time when State jurisdiction attaches to intoxicating liquors upon its delivery to the consignee. Now, then, if Congress could do that in the one instance, might it not, when there seems to be such a great demand for such action for the public good—might it not take the other step and do a similar thing, and say that State jurisdiction shall attach when it enters the State—crosses the border line? And not merely when it is a consignee at some point within the State? It seems to me that if one action is justified, either from constitutional grounds or upon the grounds of propriety, that the other action is as well justified.

Just one other thing I have in conclusion, and that is the effect of this measure. I have already intimated that this is not a prohibition law; it does not mean that intoxicating liquors shall not be shipped or imported into any State. Congress takes the position, I take it, as the courts have taken it, that the States alone are the ones to deal with this question.

Just at this point I do want to make another point. Reference has been made to the action of the Federal Government with reference to the internal revenue tax. It has been claimed, and justly claimed, that what we hear sometimes spoken of as the internal revenue license, or the Federal license, is in no sense a license, and that is true, and it ought not to be called a license, because it carries with it no privileges whatever to sell these things within a State; it only exempts a man from any interference so far as the United States Government is concerned. The Federal Government has taken the right position on that, to my mind, in that it leaves the State to decide whether it will allow a man to sell liquor, and the Federal Government will not interfere with that right.

But may I not call attention to the fact that in the absence of any action as required by this bill that at another point Congress does come in and interfere with the rights of the State in a negative way, if I may use that expression. Congress by its silence on this question, and its refusal to pass a measure of this kind, said to the State, "You shall not have complete jurisdiction over the traffic in intoxicating liquors within your borders." So that if it is the policy of the Federal Government, as I believe it is meant to be its policy, to leave to the State's jurisdiction upon this question complete and absolute, then it seems to me that from the standpoint of fairness this measure ought to become a law.

The point I was going to make in conclusion is in reference to the effect of this measure. May I say that the passage of this bill by Congress will not change, so far as your action is concerned, a single State law upon this question in this country. It would not prevent the importation—so far as this act is concerned—it would not prevent the importation of liquor into any States of this country, unless it is the West Virginia law that was passed two years ago or one year ago.

Doctor CRAFTS. This law will not do it.

Mr. NICHOLSON. No; this law will not do that in any sense whatever.

Mr. GILLETT, of California. Can they stop importation unless we pass this law?

Mr. NICHOLSON. No, sir.

Mr. GILLETT, of California. Then does it not indirectly prevent importation by making it possible to stop it; is not that the effect?

Mr. NICHOLSON. Your business is to give to the States that which it seems to have been the policy of the Government all the time to give to them, jurisdiction of the traffic in intoxicating liquors. Then if they go ahead and enact different legislation that is a different question.

Mr. GILLETT, of California. Did the Congress give that or did they reserve that? They never surrendered that.

Mr. NICHOLSON. I do not know whether Congress could give that to them. All that Congress, it seems to me, can do, and all it is asked to do in this measure, is to simply grant the full exercise of the police power with reference to the liquor traffic that has been generally understood as belonging to the State, and so Congress is not asked, therefore, to pass any prohibitory bill. If in any State the popular sentiment of the State demands something else, then that is a matter Congress had nothing to do with. Your responsibility ends, it seems to me, when the question has been determined as to the time—I go back to that point—as to the time when State jurisdiction shall attach to intoxicating liquors.

I thank you very much.

Mr. BARTHOLDT. I take pleasure in introducing Miss Phoebe Cousins, a lady well known to you all by reputation.

STATEMENT OF MISS PHOEBE COUSINS.

Miss COUSINS. Mr. Chairman and gentlemen, shall ask to beg the courtesy of this committee and sit while I speak, as I am somewhat of an invalid and a little lame.

I came here somewhat unexpectedly this morning simply to listen, but in speaking with my friend, Mr. Bartholdt, who is from my own city, he suggested that I should say a few words, and so I have come back here this afternoon to add my word against the passage of the Dolliver-Hepburn bill.

In listening to the lady who preceded me I could but feel that Olive Schreiner's words a few days since on the new women were quite pertinent to us all. She says, as near as I can condense it, that there is no new woman, it is the old woman from the Norse nations who stood shoulder to shoulder with her husband in all the great questions of the Germanic dynasty and of the German nation, and with the spirit of Brunhilde and Fredegunde, the spirit of the German women has come down through these generations, and to-day Germany stands as the leader in both men and women in art, in science, in literature. And

yet Germany has her laws in which the appetite of man is given free-rein if he so chooses; all of the beer gardens are open to both men and women, and a man can take his family and sit in a garden or in the shop with perfect immunity and no evil results are seen to any extent.

So I come to say just one word on the execution of the law. It seems to me that Dr. Mary Walker touched the keynote of this whole question in the few words which she said this morning. Can you execute the law if you pass it? I stand here today as possibly a unique example of woman, in that I have been a United States marshal. I have been the executive officer of the eastern district of the State of Missouri upon the death of my father, appointed to that position by Justice Miller of the United States Supreme Court, and I had there as an officer an object lesson such perhaps as no woman and perhaps few men can know in the execution of the internal revenue laws. The question is, can you execute this law?

How will you enforce it? We have just had an exhibition in the two courts of the highest authority, the Hague Tribunal and the Supreme Court of the United States, which has brought to the hearts of those who watch for the beacon light on the mountain top for the final triumph of justice and right—these two decisions have set back the hopes of humanity for a whole generation. Some of you are old enough to remember the frightful civil war, and how men and women on both sides of this Union laid down their lives for what they believed to be right, and there are thousands, hundreds of thousands, of men lying in unknown graves to-day and thousands of women with broken hearts.

We feel the unity of this Government in blood of men and women on both sides. And yet to-day after this decision of the civil war that the Federal Government is supreme over its citizens; that the humblest citizen, no matter of what color, white, brown, gray, or blue, has the right to his opinion and to have that opinion counted, and after the result of the war has been formed and fused into our Federal amendments to the Constitution, the fourteenth and fifteenth, the United States Supreme Court decides, through Judge Day, when a humble citizen of Alabama comes up to ask for protection in his franchise, that the State law is supreme and that Federal authority can not be exercised. And only one justice on the bench, Justice Harlan, dissented.

When peace and order came the Southern States accepted the fourteenth and fifteenth amendments as a condition precedent or subsequent to their return to the Union; and yet to-day by the decision of the Supreme Court that is entirely overthrown.

Therefore, gentlemen, I say if the Supreme Court decides that it can not protect this humble citizen by its amendment, how are you going to enforce this more simple law? The objection which I have to this whole question is its hypocrisy.

In the days gone by, in my salad days, as President Roosevelt would say, I was an ardent prohibitionist, a strong temperance woman, but through the years in my long public experience I have come to see that prohibition is an impossibility, that it breeds hypocrisy, that it breeds in our boys cunning and duplicity. Two years ago I was in a little town near the springs for the benefit of my health, and it was a prohibition town. I learned there by the experience of a whole summer of the evils of this prohibition. The liquors were brought in and

hidden in stables and the boys went down there to drink and play cards without any let or hinderance.

Just before General Butler died I chanced to meet him in a Pennsylvania avenue car just opposite his house, and he struck the keynote of this whole question in speaking with me on the Mormon question (which was then up, and I having been chosen by the citizens of St. Louis to be placed on the commission to go to Utah under the Edmunds-Tucker bill). General Butler discussed the appetites and passions of men, and as near as I can remember he said this: The appetites and passions of men are the great and telling forces that drive the whole machinery of civilization forward. Without them the world would sink into barbarism and decay.

The desire to perpetuate himself in a family and to build a hearth-stone, and center around that hearthstone the love that brings in its train all that makes life worth living, is the divine impulse that is planted in the soul of all humanity for its blessing and its advancement. That the sex affinity is vitiated, is prostituted, and made to run riot and bring ruin and disorder to humanity, does not cut any figure in the question as to its immensity and its possibility, and the fact of the potentiality and its final blessing of him, his children, and the sweet and virtuous lives of men and women.

So, too, he said, the appetites are the twin companions of the passions, and without them, these two combined, there is no advancement of the race in progress or civilization.

Great Britain to-day, with all of her boasted civilization, holds India and China in subjection by the fact that she paralyzes all this magnificent passion and appetite of the Hindoo and of the Chinese by her demoralizing opium traffic. Mr. Carnegie said in an article in the North American Review that it will not be many years before India will run blood, with the effect that they will finally throw off this despotism of opium and return to their own.

I was talking with a gentleman from Brooklyn who is acquainted with all the magnificent reforms which were instituted by Mayor Low, and he told me that it was the mere fact that Mayor Low had exercised his authority too severely in enforcing the excise law that had caused him to be defeated, and that no mayor of New York had given so fine an administration to New York and Brooklyn as Mayor Low. And yet the fact that he took from the humblest citizen the right to get a drink when he wanted it was the cause of the overthrow. Not a democratic revolution, gentlemen, as some of you would have it understood, but simply because they wanted the right to a drink when they liked.

And now let me say but one word in conclusion, and that is, your prohibition States do not show the advance and the progress that it would seem they should make in these laws. I read recently in regard to Senator Dolliver and Mr. Hepburn's State (Iowa) that 45 children less than last year are absent from the schools, and the statement was made that the only cause that could be assigned for it was that the young and vigorous men of Iowa had removed to the far western States and taken their children with them.

The fact is, gentlemen, that severe prohibition does not prohibit, and, as I said, it produces hypocrisy on all sides.

And in closing let me illustrate to you what you see in everyday life in reference to this question. Some three years ago I was very ill

one night and a lady in a room above me brought me some good old Bourbon, and in the morning the glass was standing on my table and the cook, a survival of "good old slave days," brought me my coffee. At once her glance at the bottle indicated to me that she wanted a drink. I said, "Julia, that does not belong to me, but the lady upstairs, and so I can not give you a drink unless she would give me authority." She set the coffee down and went out and came back in a few moments, returning with a china cup and looking very imploringly, and she said, "I have just swallowed a fly and I am so sick that I must have a drink."

That perhaps may illustrate one point of the many deceptions which men bring to get their liquor.

Permit me in closing these few words, which I feel are somewhat rambling, to commend unto you nature, to follow nature's laws and be wise, and in doing this it not only may give to each State the self-government which implies self-restraint, but open wide the doors, feeling sure that they will not fall into temptation, if self-government, which this lady has so beautifully illustrated, is taught by the parents of our children.

Mr. DINWIDDIE. At this point I would like to introduce Mr. Joel Borton, who represents the Society of Friends.

STATEMENT OF MR. JOEL BORTON.

Mr. BORTON. Mr. Chairman and gentlemen of the committee, ladies, and gentlemen, I represent the religious body of Friends in Philadelphia who held their yearly meeting at Fifteenth and Race streets, numbering about 11,000.

I represent them here in the interest of this bill because we believe that it is founded upon justice and truth, and this representation of ours, I am sure, are educated up the point that we will be willing to support a measure like this if you will pass it and allow it to become a law.

We are here in the interests of this bill because it is founded upon good, common sense, as I believe all right laws are instituted and founded not only in the present day, but from the very beginning of time.

"If thou doest well thou shalt be accepted" was a simple law. "Cease to do evil and learn to do well" was the law that came to Isaiah. "As ye would that men should do unto you do ye even so to them" was the law given by the great Divine Master. And now it seems to me that this bill is founded upon that very principle, that as ye would that one State should do to you do ye even so to them, and that this Government ought to sustain such a law.

I think, my friends, that we have departed from the subject too much to-day in a discussion of temperance and prohibition, and yet I do not feel quite clear without—as this has been done—refuting two or three things that have been mentioned here, especially with reference to that greatest library of all others—the Holy Scriptures, the Book of Books. I can not conceive how anyone who has read from Genesis to Revelation in that book failed to see only the one side of the temperance argument; failed to read that Solomon declared that "Wine is a mocker, strong drink is raging, and whosoever is deceived thereby is not wise;" warning them, admonishing them in regard to

the wine when it is red in the cup, and that it "biteth like a serpent and stingeth like an adder." How is it these were not brought up as evidence this morning from those who said they were ministers of the Gospel.

Then again, in reference to this that we read in regard to the wedding feast, the wine that was produced there by the Master. I believe that it was the governor of the feast who decided that that was the best wine, and that Jesus himself told them to draw it and fill the water pots, draw and fill them with water and then hand it out to them; and those who partook of it at one time, "How is it that they have saved the best wine until the last?" Usually it is customary to give the best first, and when men have well drunken then to bring in the poor wine.

Is it not an open question whether or not those who had been drinking, perhaps for hours, had become so intoxicated that they could not tell the difference between wine and water? Then again, did not the Master say that no drunkard should enter the Kingdom of Heaven? Again, and this comes down to the question now, did not the Apostle Paul say that "if by eating meat or drinking wine my brother is offended, I will refrain myself?"

Here, ladies and gentlemen, I believe this is the point that we to-day want to come to, and upon which this bill hinges. That the 30 or 35 States which have prohibitory laws directly or indirectly should have the protection of the Federal Government in sustaining those laws of their own States; that this law should be enforced there, that if by the partaking of wine others are offended I will myself refrain.

In regard further to this argument presented by my brother, the brewer, he admitted himself the injurious effect when his wife plead with him for her children, and he admitted that he would try it, and the moment he saw there was danger that he would quit the business. He admitted there that there might be a danger in it, and then he forgot other mothers' children and did not say that he would enter a protest and would cease manufacturing to save the thousands and hundreds of thousands of other mothers' sons.

I am here to appeal to this committee and to Congress on behalf of the Friends of Philadelphia, to appeal to you on behalf of my own family and myself in the interest of God and the spreading of His kingdom on earth, that you will give this a most careful hearing and will do all that is in your power to pass the bill and have it become a law, because it is founded upon justice and truth; because it is simple and plain and in accordance with good common sense, upon which all the real, true, living principle of all the laws of our land are founded.

I thank you.

Mr. DINWIDDIE. We would now like to hear from Mr. Kellar, who is president of the District of Columbia Christian Endeavor Society.

STATEMENT OF MR. OWEN P. KELLAR.

Mr. KELLAR. Mr. Chairman and gentlemen, I am proud to speak for more than 7,000 young people, members of the evangelical churches of this city, belonging to the Christian Endeavor Societies of which I have the honor at this time to be president. We had a convention last month and the closing night of that convention we adopted some resolutions, one of which is in favor of the Hepburn-Dolliver bill, and I would like to read it:

"As Christian Endeavor stands for pure homes and good government, and the liquor saloon stands as the enemy of both, we are unalterably opposed to the saloon under every name, whether licensed or unlicensed, and we heartily indorse the bill now pending in the Congress of the United States known as the Hepburn-Dolliver bill, the purpose of which is to permit each and every State to control the liquor traffic within its own borders." I do not need to argue this question, gentlemen. You have heard arguments more than you need, but I submit that such a law would be eminently fair and just, in accordance with the principle of home rule. It is conceded, I believe, by everybody, that local option is constitutional, even if it is impracticable. Some say it is impracticable. If a State has the right by the voice of their lawful voters to say that in a State liquor shall not be sold, or if the voters of any municipality or any township has the right to say by a majority vote that liquor shall not be sold within their town or township, is it not be perfectly proper, is it not legitimate, for the Congress of the United States to make that possible?

Under the present condition of affairs it is not quite possible for them to enforce a local-option law, and if Congress should find that they have made a mistake the same power that passes this law can easily repeal it. Or if the law be unconstitutional, as our friends insist it will be, if passed, that fact will be determined by the courts. This committee, the Congress of the United States, certainly can not make a mistake in passing the law. If it should prove to be a mistake, the mistake can be easily corrected.

I can remind you, gentlemen, that in the past few years you have done some acts that have earned for you the approval and the gratitude of the Christian people of this country—a very large number of them. We thank God that no longer is liquor sold in this Capitol building. We thank God that the Army is now without the canteen, and we thank that man, John D. Long, who by an order banished beer from the Navy.

Gentlemen, thousands of men and women are blessing God for those actions, actions of this Congress and the officials of our Government. Pass this law and you will earn the gratitude and the blessings and the prayers of those same people.

STATEMENT OF MR. P. A. WILDERMUTH, OF THE PHILADELPHIA BAR.

Mr. Chairman and gentlemen of the Judiciary Committee, there has already been much said pro and con regarding this Hepburn-Dolliver bill, both from a legal aspect and also from a commercial standpoint. I would like to call attention to a few words contained in the bill itself. On line 5 you will find the words "use, consumption," and on line 6 "storage." The one word there "sale," which is mixed in with these words "use, consumption" and "storage," may be all right. But from those words contained in this bill if a State sees fit it can seize any and every article of liquor that comes into that State and destroy it, whether it is for a citizen's own private use or whether it is for his own consumption or whether he has it stored in his own cellar.

What would prohibit the police power of a State under this word "storage" here from going into a private citizen's cellar and saying, "You have contrabrand goods, you are a lawbreaker, and we will

take them from you." Mr. Dinwiddie yesterday said it is not the object nor the purpose of the bill to deprive the citizens of their right to use liquor; that is, for the use of themselves and families. He refers to States that maintain the same position; but he knows that the very object of this bill is to take the right away from that citizen, for his own use—he knows that—and anyone in reading this bill can see that "nigger in the wood pile."

Mr. LITTLEFIELD. Your proposition is that this bill accomplishes that result; that is your opinion as a lawyer?

Mr. WILDERMUTH. Yes, sir; as it is at present drawn. Again, here it has the word "before" on page 7, "before and after delivery." Now, that word taken in connection with section 2 would mean that no carrier will take goods in one State and bring them into another State where their delivery would be prohibited. In other words, a common carrier does not want to break any law, and if a State should make liquor an article to be seized when brought within the State, then the carrier in the first instance would not take those goods in any other State for shipment into the State where it is prohibited. That is another thing that this bill provides for.

Another thing that we should look at is that we want to leave nothing to judicial construction. We want to look at this act and see in what manner it can be enforced.

Mr. PALMER. If you can not enforce it, what are you worrying about?

Mr. WILDERMUTH. We are not worrying about it. It is a confession of the weakness of the prohibition State that they can not state, that is what is worrying the people.

Mr. PALMER. Does that worry you—that the prohibition States can not prohibit?

Mr. WILDERMUTH. It does when a negative measure of this kind is brought here to destroy the liberty of two-thirds of the people whose rights should be inalienable as to what they should drink.

Mr. CLAYTON. If it does not destroy the liberty of the citizen using liquor, how should it worry you?

Mr. WILDERMUTH. If it did not destroy the right of the person to the use of liquor—but from my point of view it does most emphatically destroy that. That is why I am worrying.

Mr. PALMER. Please point out the provision of the bill.

Mr. WILDERMUTH. I have already. "Use, consumption, and storage." The prohibiting a common carrier by bringing liquor from one State to another. It prohibits the very State where the goods are manufactured and taken on board to carry them to another State from making a contract.

Mr. LITTLEFIELD. What is the language?

Mr. WILDERMUTH. In section 2 you will find that all corporations and persons engaged in interstate commerce shall, as to any shipment or transportation of fermented liquors, and so forth, be subject to all laws and police regulations with reference to such liquors or liquids or the shipment or transportation thereof.

Mr. LITTLEFIELD. Now, is it your conception as a lawyer that that language prohibits the importation from one State to another?

Mr. WILDERMUTH. I do most emphatically say—

Mr. LITTLEFIELD. Does that language do that?

Mr. WILDERMUTH. Yes; that language would prohibit the shipment, where there would be a State law passed to that effect.

Mr. LITTLEFIELD. That is another proposition.

Mr. WILDERMUTH. I predicated my statement upon that. I said where the proper laws were passed by the State this act would have that effect.

Mr. GILLETT, of California. Without that act they could not pass laws of that kind.

Mr. WILDERMUTH. That is true.

Mr. GILLETT, of California. So they both work together.

Mr. WILDERMUTH. Yes, sir; that is the idea.

Mr. PALMER. Do you not think the States have a right to pass such laws as they please?

Mr. WILDERMUTH. Yes; but the United States has no right to interfere and give them any power which would leave it to their discretion to enforce.

Mr. LITTLEFIELD. That they may or may not enforce? Do you mean that they can not enforce, or that they will not enforce?

Mr. WILDERMUTH. It is left to their own pleasure as to whether they will enforce it or not.

Mr. LITTLEFIELD. I understand your proposition to be that it could not be enforced, or do you not mean that?

Mr. WILDERMUTH. I asked you how you could enforce that law.

Mr. HENRY. Which law; this law or the law that is in some prohibition State?

Mr. WILDERMUTH. A secondary law passed by a State taking the benefit of this Hepburn law.

Mr. HENRY. You do not mean the enforcement of this law?

Mr. WILDERMUTH. Not this law itself, but in conjunction with the State law.

Mr. GILLETT, of California. Then this law is of no effect unless you get some kind of a State law passed to enforce it?

Mr. WILDERMUTH. That is my view.

Mr. GILLETT, of California. Your idea is that no law passed by any State can be enforced?

Mr. WILDERMUTH. Yes.

Mr. GILLETT, of California. How is it going to embarrass you, then?

Mr. WILDERMUTH. If there is a State law passed, then that State—where they take the benefit of this law that is now before you to be passed—that can prohibit any liquor from being brought into that State where it is prescribed.

Mr. LITTLEFIELD. Is that the statute that you say can not be enforced, or do you think it can be?

Mr. WILDERMUTH. Under those facts it may be enforced. I will not say it can not, nor I will not say it won't be, but I will say that it is an open question of whether it will or not. But I am satisfied of one thing, that it won't be long after it is passed, if it is brought before the United States Supreme Court, that it will be declared unconstitutional.

Mr. CLAYTON. We would like to hear from you on that.

Mr. HENRY. Before you get to that your contention is that prohibition does not prohibit?

Mr. WILDERMUTH. It does not and never will.

The first subject to which your attention is called is that of the right of the common carrier to deliver alcoholic drinks brought from one State to another where its sale is prohibited by law.

That right was decided by the Supreme Court of the United States in the case of *Leisy v. Harden* (135 U. S., 100). The bills now before you aim to practically nullify this decision of our highest Court. Aside from this legal phrase, there is a principle involved which strikes at the very foundation of our personal liberties. No law should be made which will result in a widespread dictum as to what we shall drink. It is a dangerous proceeding, whether in a republic or monarchy, to abridge the personal privileges assured to us by existing and rational federal law, and any attempt to create or enforce any restriction binding upon all the States for the benefit of a few States who have passed, or may pass, prohibitory laws is unwise.

The still voice of the citizens of two-thirds of the sovereign States of this glorious Union who strongly oppose the passage of the bills now before you may yet be heard in a voice of thunder. Like Banquo's ghost, the liquor question will not down nor can any unwise or unjust legislation suppress it. The citizen still has the right to manufacture liquors for his own consumption which no law can gainsay him. Liquor should not be made a subject of Federal legislation between the States, each State has plenary power to deal with its proper regulation through its police powers without any Federal interference, and I respectfully contend, without doubt, that the bills now before you, if passed, will be declared unconstitutional.

First, because it is an illegal delegation of Federal power to the police powers of a State, which may or may not be enforced in different ways in the various States subject to the laws of each State. Second, that it has all the marks of special or class legislation which may be enforced in one State and not in another, and to deprive a citizen of a prohibition State his privilege to import liquor for the use of himself and family is a serious abridgement of his natural rights which shall forever remain inviolable, by this or any other such vicious legislation.

Once legislation of this kind is passed at the behest and importunities of those in whom there still survives the spirit of intolerance that burnt weak unfortunates at the stake and branded others with the scarlet letter, heaven knows where it will end.

Doctor Parkhurst, some twenty years ago, conducted in New York City one of the most rabid crusades ever undertaken against liquor and vice, yet less than one year ago the Doctor, a much older and wiser man from his experience, publicly advocated the opening of concert gardens on Sundays and their right to sell wine and beer on that day.

Gentlemen, it is a prohibition State that is responsible for creating Carrie Nation and "Sockless Jerry," and statistics show that they are the least progressive. Is there any wonder that they show a decrease in population? They are good places to stay away, and if there, to leave. When a State enacts prohibitory laws it can go no further, nor can an unwarranted and unconstitutional Federal enactment give that State any greater exercise of police power by any arbitrary and unlawful meddling with or restrictions imposed upon the common carriers of the United States. The liquor question was fully and ably discussed by Judge Lumpkin in volume 18, Georgia Reports, page 601, and is of great interest.

We should be wise enough to see that the usages of centuries are not to be uprooted in a day. Her counselors have profited by the lessons of wisdom drawn from the experience of the past. They have learned that the imposition of high duties does not destroy the appetite for spirits, and that no vigilance on the part of officers or severity of the laws can eradicate a custom so long indulged and universally practiced, and that the real effect of all ultra measures has been to continue the supply through illicit channels and thus to superadd the meanness of concealment to the vice of drunkenness. They have studied the history and results of a premature effort made by the British Government as early as 1736 to put a total stop to the further use of spirituous liquors, except for medicinal, manufacturing, and mechanical purposes.

During the latter part of the reign of George I, and the earliest part of that of George II, gin-drinking had become exceedingly prevalent. And the evils resulting from the multiplication of grog-shops, were denounced from the pulpit and in the presentments of grand juries, as pregnant with the most destructive consequences to the health and morals of the community. At length, ministers determine to depress the mischief effectually. They passed an act, the preamble of which recites, that "whereas the drinking of spirituous liquors, or strong water, is become very common, and especially among the lower and inferior rank, the constant and excessive use of which tends greatly to the destruction of their health, rendering them unfit for useful labor and business, debauching their morals and inciting them to perpetrate all vices. And the ill consequences of the excessive use of such liquors are not confined to the present generation, but extend to future ages and tend to the destruction and ruin of this kingdom."

A duty of twenty shillings a gallon was laid on spirits, exclusive of a heavy license duty on retailers. Extraordinary encouragements were held out to informers; and a fine of 100 pounds was ordered to be rigorously exacted from those who were engaged in it, even though inadvertence should vend the smallest quantity of spirits which had not paid the full duty.

Here was statute sufficiently stringent to satisfy the most clamorous friend of legislation; and that, too, adopted by a monarchy, which depends upon force rather than public opinion for the execution of its laws. But instead of the anticipated effects, it produced those directly opposite. The respectable and conscientious dealers withdrew from a trade proscribed by Parliament, so that the business fell almost entirely into the hands of the lowest and most profligate characters, who, as they had nothing to lose either in character or estate, were not deterred by penalties from breaking through all the provisions of the act.

The masses, say the annalists of that period, having in this as in all similar cases espoused the cause of the contraband dealers (and no wonder that they should, feeling as they do, that all such legislation operates practically, if not so intended, as an odious discrimination against them), the public officers were openly assaulted in the streets of London and other great towns; informers were hunted down like wild beasts, and drunkenness, disorders, and crimes increased with frightful rapidity. "Within two years of the passing of the act," says Tindal, "it became odious and contemptible, and policy as well

as humanity forced the commissioners of excise to mitigate the penalties." (Continuation of Rapin, vol. 8, p. 358, ed. 1759.)

The same historian mentions (ib., p. 390) that during the two years in question no fewer than 12,000 persons were convicted for offenses connected with the sale of ardent spirits. But no exertion on the part of magistrates and ministers could stem the popular current. And according to a statement made by the Earl of Cholmandeley in the House of Lords (Timberland's Debates in the House of Lords, vol. 8, p. 388), it appears that at the very moment when the sale of spirits was forbidden as illegal, and every possible exertion made to prevent and suppress it, upward of seven millions of gallons were annually consumed in the city of London alone, and parts immediately adjacent thereto. Finally, government gave up the unequal struggle, and in 1742 repealed the high prohibitory duties, notwithstanding the vehement opposition of the bishops and many of the peers, who exhausted, we are told, all their rhetoric in depicting the ruinous consequences that would follow.

To these declarations it was unanswerably replied that, whatever the evils of the practice might be, it was impossible to repress them by prohibitory enactments until there was laid, broad and deep, in the mental and moral improvement of the people, a foundation to sustain them, and that any premature attempt to do so would be productive of far greater evils than had ever resulted or could be expected to result from the greatest abuse of spirits.

Similar efforts were made at a later day to arrest the progress of demoralization in Ireland and Scotland resulting from the same cause, which ended equally unsuccessful and unsatisfactorily.

To follow out logically section 2 of the proposed act it would mean that if a State passed a law that liquor delivered within its limits by a common carrier should be liable to seizure and destruction, and that same State having already prohibited the manufacture of liquor, then even the hospitals, druggists, and physicians of that State would be without *spiritus fermentii* for medicinal purposes; for if it is not manufactured within the State it necessarily must be brought therein and by a common carrier.

It follows that all liquor would under the State law be seized and destroyed upon its delivery within the State, no matter to whom it may be consigned. A law should be consistently enforced, or repealed, and a proposed law of this kind should never be passed. Would or could there be a legal differentiation as to its use when once delivered in the State?

Why should Federal legislation be dragged below the level of a law of a State, to be made a creature depending for its enforcement or nonenforcement upon the whim of a State legislature? Mr. Dinwiddie admits that it will apply only to prohibition States, of which there are but few in this Union. What he means is, that you pass this bill presumably to help the prohibitory laws of those States; but, once made a law, what is to prevent Missouri or any other State from excluding the liquors manufactured in another State from its territory, even though it allows liquors to be manufactured and sold within its own boundary? Why did Congress in its wisdom pass the interstate-commerce act? Surely not to afterwards repeal in part or qualify it so as to exclude or discriminate against any one or more articles of commerce from which both the United States and the States derive revenue.

He further quotes as an alleged precedent that nitro-glycerine was excluded; even so, the comparison is ridiculous. In his over-zealous mind he may be convinced that liquor and dynamite are one and the same thing: he places them on a par. Legislation regarding explosives is necessary to protect life and property, and does not take away the personal liberty of citizens; and he quotes from States who do not desire to deprive its residents of importing liquor for their own use. In my opinion he does know, or should know, that this is the very purpose of the proposed law, which unquestionably would result in one State having the power to prohibit another State from shipping liquor within its limits for the use of any of its citizens—aye, even for their personal use.

And one word further. When a man like Mr. Crafts, presumably representing many church organizations (I will not say Christian), stands before your honorable committee and denounces a body of men and women of whom he knows nothing, as anarchists, his words are not worthy of consideration; he is an anarchist at heart and has not the spirit of the lowly Nazarene in his breast.

STATEMENT OF MR. FRANK HIGGINS.

Mr. HIGGINS. Mr. Chairman, and gentleman of the committee, I deem it a privilege and an honor to speak before this honorable committee on this question, and I will not occupy very much of your valuable time.

I come from one of the States which helped to ratify the Federal Constitution—the State of Maryland—one of the original thirteen States, and I believe one of your honorable committee has the honor to be from the State of Maryland.

Now, gentlemen, I am not going to take up much of your time, but I do want to impress upon you the real vital issue that is before you, and that is the question of the relation of the Federal Government to the States. The Supreme Court of the United States has declared time and time again—and, by the way, one of the decisions was rendered by the honorable Chief Justice Taney of Maryland, the State that I come from, and they have decided time and time again that it is within the police power of the States to regulate the question of the sale and the disposition of alcoholic liquors within the States; that it is peculiarly within the province of the State to pass laws to regulate it or control it, or to absolutely prohibit the sale, manufacture, transportation and importation of alcoholic liquors.

It was never within the minds of the framers of the Federal Constitution, in my humble opinion—this condition of affairs that presents itself to-day in our Republic. They had at that time free whiskey. They had no internal-revenue laws taxing the sale of distilled or fermented liquors, and therefore they could not have had this question—be it an academic question, legal, or what not—within their minds, because conditions that now present themselves to you, and are before the people of this country, could not have been in their minds. They did not entertain or anticipate any such condition of affairs that is before you to-day.

Mr. GILLETT of California. What evidence have you of that fact—that that is so?

Mr. HIGGINS. History will show it to you if you will follow care-

fully the passage of laws and the conditions that now present themselves to you, that are before you to-day. They could not have anticipated or had in their minds this question that is before you to-day. What relation exists between the Federal Government and the State? Has Congress a right—as one member here has stated, is it now time for Congress to take jurisdiction in this matter and give back to the States what the States gave up to the Federal Government at that time, the control of interstate commerce?

Mr. GILLETT of California. Did they do that without the absolute consent of all the States?

Mr. HIGGINS. I think it was ratified by the two-thirds, or the three-fourths majority which was necessary to ratify the Constitution, and I am sure that Maryland was one of them; that gave up to the Federal Government the control of interstate commerce or commerce between the States; but they never contemplated that Congress should not regulate and control or give back, as it were, if you please, to the States the right to legislate in regard to whatever is conducive or deleterious to the health, or morals, or may become a nuisance in the States.

This is the question that is before you today. It seems to me that is the question for Congress to decide; whether they shall prohibit, or give the States the full exercise of this provision; should give the States the right to carry into effect and give full effect to their prohibitive measures.

There is no doubt that the States have a right to regulate this matter, and they have in a great many States. Now, in Maryland, we have a condition of affairs like this. That over one-half the counties have a local prohibition measure, and, as has been said here to-day, you can not enforce such laws. I tell you, gentlemen of the committee and the honorable people assembled here, that the enforcement of law creates a healthy public sentiment on this question; that the way to get public sentiment on a moral or academic question, if you please, is to enforce the laws that we have, and you can see by the passage of this law it will aid and help the prohibition States or the States that have prohibitory measures to more nearly enforce their local laws.

What right have outside influences like the great brewing influences of the country that have been represented here to-day and have spoken, what right have they to come here and say how we shall govern our internal affairs, how we shall pass laws regulating our control of the deleterious and harmful drugs, how we shall pass laws, and then seek, under the guise of interstate commerce, to nullify them? That is the question that presents itself to you. Has Congress a right to take a step forward? Whatever you do, gentlemen, on this question, gentlemen, will be in the trend of public opinion and the healthy public sentiment in this country. It is tending that way, and you will be responsible, and will have to answer to the bar of conscience and to God. Whatever is best in the interest of humanity and the enforcement of law, of good, healthy, moral laws, is in the right direction.

I thank your honorable committee now for this privilege, and hope you will favorably report the bill, so that Congress shall discuss the matter on the floor of the House.

FRIDAY, *March 4, 1904.*

The committee met at 10.45 a. m., Hon. John J. Jenkins in the chair. The CHAIRMAN. We are ready to proceed.

Mr. BARTHOLDT. By agreement of the other side I take pleasure in introducing to you first Mr. Guter, of Newark, N. J.

The CHAIRMAN. I understand that these gentlemen will talk briefly.

Mr. BARTHOLDT. Yes, sir.

STATEMENT OF MR. NOAH GUTER, OF NEWARK, N. J.

Mr. GUTER. Mr. Chairman and gentlemen of the committee, I wish to state that I do not represent any brewing or liquor interest; I don't represent any organization, I am a plain citizen from the State of New Jersey, representing 30,000 citizens, all voters, who wish to protest through me against the bill which is proposed and is before your committee now.

It is not a question for us whether there is beer or liquor sold or beer or liquor transported from one State into another; it is the principle involved in this bill which we protest against.

We claim to be good, law-abiding citizens of this country, able to control our wishes and desires for anything, and do not see the necessity to make any prohibitory laws for us—for the American man. We do desire to state to this committee that from our knowledge of prohibition laws that prohibition has created more lawbreakers than any other laws which have been placed upon the statute books of this great land. The question has been asked during this hearing several times, Why is it not possible for the States in which prohibition laws exist to enforce those laws? We have not had one answer to tell us why the States can not enforce those laws. I have been through the prohibition States.

I have been through Iowa and I have seen more beer and liquor sold openly over the bar contrary to law in the State of Iowa than in any other State in the Union, and I have asked the question, "How is it? I believe I am in a prohibition State and yet I see you are not molested any more than we are in New Jersey." Well, the answer I got was this, "You know this is a political question and we want to see either side touch this question; they know very well that the majority of the people of this State or any other State are against prohibition and that these laws are placed on the statute books by the indifference of the people against prohibition, and when they are placed there they are used for a certain purpose—not to stop the drinking or the selling of liquors, but for other purposes," and it would be necessary to send into these States and then it is easy enough to find out what the prohibition laws are put on the statute books for.

Mr. CLAYTON. What is that other purpose; did you ascertain that?

Mr. GUTER. To keep the balance of power, if I may call it so.

Mr. CLAYTON. How? I would like to know the modus operandi of it.

Mr. GUTER. If you wish to know the modus operandi I guess you have been longer in public life than I have.

Mr. CLAYTON. I am not testifying; you are.

Mr. GUTER. And if the committee wishes to ask me any questions I am ready when I get through.

The CHAIRMAN. Your time has expired.

Mr. GUTER. All right. Thank you, gentlemen.

STATEMENT OF MR. JACOB L. BIELER OF INDIANAPOLIS, REPRESENTING THE GERMAN-AMERICAN ALLIANCE OF INDIANA.

Mr. BIELER. Mr. Chairman and gentlemen of the committee, I thank you for the opportunity which you have afforded me to present briefly the sentiments of the German-American Alliance of the State of Indiana in opposition to what is commonly known as the Hepburn-Dolliver bill. This Alliance represents 1,750,000 people in the United States, and in the State of Indiana has 45 societies and a membership of over 5,000.

I am not here to argue before the members of this committee the constitutionality of the proposed legislation. It would be presumption to make any suggestions along that line to the members of this Judiciary Committee, composed, as it is, of eminent lawyers. Besides, it is not for me, a layman, to raise a legal question before you. I am speaking purely from the standpoint of the moral and individual features connected with the proposed bill.

It seems to me that an element of our population so strong and representative as the German-American Alliance, is entitled to come before this committee and make known, though its representatives, the sentiments which it entertains concerning this bill, if it should become a law. They hold that it would be an infringement of their rights and they deny the right of even a majority of the people to dictate to a minority in matters regarding purely personal and individual rights.

In other words, while everybody concedes that on matters which generally affect the prosperity of the country the majority should rule, the majority has no right to say to the minority what that minority shall eat and drink, or how they shall exercise purely individual rights. This legislation is, to my mind, sumptuary, and, as happens in the case of most laws, of which it is a forecast, it would probably fail to be enforced. It is one of the principles of German-American citizenship to respect law and order, and they teach their children and their neighbors, by precept and example, a wholesome regard for the laws. For this reason they believe that any legislation which can not be strictly enforced and which results in irreverence for law and disregard of the rules of civil government, is not calculated to elevate citizenship, and in itself defeats the real objects of the law.

The bill is obnoxious because it is an abridgement of personal liberty. We have always held that these moral reforms can best be worked out through education and other civilizing influences. So long as the exercise of purely personal rights does not become a public menace, nor offensive to society generally, there is no good reason, and, in fact, no authority, for legislation denying these rights. The efforts to accomplish by legislation what should be left to education and civilization has resulted, as is well known in most of the prohibition States, in evasion of laws, travesties upon justice, and ultimately in the repeal of the so-called moral legislation.

I am not representing a purely local sentiment in coming before

your committee. You have already heard from the president of our Alliance and he has truthfully stated to you that over 6,000 associations and societies have petitioned Congress not to pass this bill.

The membership of this society is representative of the German-American citizenship as a class. May I, although a German-American, be permitted to say at this time that there is no element of our citizenship which has done more to uphold high national standards and give a stable character to our citizenship than the Germans. They are industrious, frugal, and law abiding. They have fought in the wars of the country and upheld the flag in times of national peril. They are thrifty, and in any community in which they form an important part they build comfortable homes, meet their obligations to their fellow-men, and by their labor and adherence to the obligations of society and morality make for the prosperity and welfare of the country.

It seems to me that in view of these facts they are not asking too much when they ask Congress to keep hands off when pernicious legislation is proposed abridging their privileges and liberties as citizens.

The bill is only one of a number of such pernicious measures. If passed, it will be the entering wedge for other legislation of more rigorous character. It is inconceivable that public sentiment would long sustain such laws, but it seems to me that the experience which the States have had concerning this class of legislation ought to cause Congress to hesitate and avoid the evil effects now, rather than to have to remedy them later.

I have presented to your committee the sentiments of our society from the purely personal and social standpoint. I am not here to point out what effect such legislation might have on a business which contributes such an important proportion of our revenues, nor to raise a question as to whether this legislation would be in accord with the Federal Constitution.

You have been unusually courteous to grant me this hearing, and I thank you for your consideration and bespeak for our memorial that full and judicial consideration which characterizes legislators and men sufficiently eminent to sit in a committee of this high character.

STATEMENT OF MR. ANDREW ARNS, OF NEW YORK CITY.

Mr. ARNS: Mr. Chairman and gentlemen of this committee, I have the honor to represent the united German societies of the city of New York in opposition to the measure now before you under consideration.

This organization is composed of about 150 different German-American societies, having a membership of over 50,000. We are all opposed to this measure. Our main reason is from the standpoint that laws should not be enacted which curtail the liberty of the inhabitants of this free land to receive and use for his own consumption what he pleases and deems good and beneficial for himself and his family.

While I am not a lawyer, but a business man, I believe in the principle that the people are not made for the law, but that the law is made for the people. If, therefore, it behooves one State through influences, peculiar to the season and due to fanaticism, to enact laws restricting unnecessarily the liberties of its inhabitants, it does not in my opinion

follow that the individual is bound by that law in regulating his own diet or in preventing him from acquiring things which he chooses for his comforts.

It was found practical in colonial times to burn women because it was asserted that they were possessed of witchcraft. To-day such an idea is simply scouted as a fallacy, and anybody who would attempt to offer such legislation would be deemed a fit subject for a lunatic asylum. The same is true of the liquor question, because in many States were total-abstinence laws rigidly enforced they would be speedily repealed.

It seems to me that the Congress should not lend its hand to help the temperance cause in this way. Temperance is a moral question, and can only be made practicable by conversion and not by legislation. Christ said to his disciples to preach the gospel to those who would hear them, and those who would not hear them to leave them to their own fate. So here the cause of temperance is promoted by conversion and not by compulsion.

My own experience, based on a long association and intercourse with liberal-minded people, is that by letting them have their own way in a reasonable manner in the drink problem the interests of the community are better subserved than by total restriction.

If one State, through obnoxious influences, is actuated to enact different laws, the whole community of our liberal land should not be obliged to suffer by it, or stand by and tolerate the sufferings of those who are unfortunate enough to reside in that State.

We could have brought here a half million signatures if we had had time. If that law would be enacted it would bring a million working-men out of work, would cause a large loss to legitimate business, and the United States would lose many millions of revenue.

I hope that you will not give your vote and voice for this bill. The eyes of the American people and of the whole world are fixed at this moment upon this committee, and I hope that you will do what a majority wish you to do.

STATEMENT OF DR. FREDERICK WILLIAM STUART, OF BOSTON, MASS.

Mr. STUART. I am a physician from Boston. As a dispensary doctor and as overseer of the poor of Boston for seven and a half years, the last three years being chairman of the committee dealing with the poor of Boston, I believe I know something of this question, and that I can speak for not only the German-Americans, but the city generally from which I come. I believe that the intelligent patriotic thought on this matter is opposed to this bill, because, in the first place, it does attack personal liberty, not actually, but potentially, in that it enables States to attack it.

We believe that the proposed law is not possible of being carried through. We are law-abiding citizens, and we will obey the law if it is passed, but there are many who will not; public sentiment is against it, and we do not think it is wise. In other words, we believe the speakeasy will continue just the same. We know in our charity work that pauperism, illegitimacy, crime, and all these things go hand in hand, and it is not scientific to say that the one symptom which anyone observer can see is the cause of all this crime and pauperism. We

believe that children should be born right and bred right, and heredity will tell.

If I had the time I would like to place before you the statement of Mr. Jerome, of New York. I am sorry I have not time. But I thank the gentlemen, and I want you to understand that I give my time as the overseer of the poor of Boston for humanity's sake—I am not paid. I give my time because I believe in what I think and say, and I want to perform some service for humanity.

Mr. DINWIDDIE. At this time I would like to introduce Mr. Joshua L. Baily, who has been the president of the National Temperance Society of New York City and who will occupy 15 or 20 minutes of time. Mr. Baily was referred to here yesterday.

STATEMENT OF MR. JOSHUA L. BAILY, MERCHANT OF PHILADELPHIA, FORMERLY PRESIDENT OF THE NATIONAL TEMPERANCE SOCIETY AND REPRESENTING THAT SOCIETY BY REQUEST OF THE BOARD OF MANAGERS.

Mr. Chairman and gentlemen of the committee: I was in attendance here all yesterday, and an attentive listener.

Although a good deal of interesting matter was laid before us, a very large portion of it seemed to me to have little relation to the real question at issue. I thought many statements made were misleading, and some of them very inaccurate and calculated to influence the committee adversely to the bill, and were made with that intent. And, however irrelevant, it has seemed to me that those misleadings and inaccuracies ought not to be passed by without correction. To attempt this correction where it appears to be most needed will be my first purpose.

At the morning session four clergymen appeared in the interest of the opponents of the bill (all of them, I think, representing German congregations), but instead of directing their remarks to the clear purpose of the bill, they occupied themselves chiefly in denunciations of prohibition, both as a principle and a practice, and openly advocated the use of intoxicating drinks.

I have great respect for ministers of the Gospel, and it is not pleasant to me to take exception to their utterances; but I think it will not do to let pass without comment and correction some things said by them.

The first of the reverend gentlemen who spoke quoted the Bible as authority for the use of wines and strong drinks, and claimed that all through the Old Testament Scriptures such use was commended and even enjoined, but he failed to tell us that there are quite as many passages wherein the use of wines and strong drinks is condemned and prohibited, and in one place the use is described as having such dangerous qualities that we are not even to look upon it. This seeming inconsistency is reconciled when we remember that two very different kinds of wine were in use in Bible times—one the unfermented juice of the grape, which was commended as beneficial, and the other the fermented juice, or "strong drink," which was condemned as harmful. The reverend speaker proceeded to call his witnesses to prove the propriety and utility of wine drinking. His first witness was the patriarch Noah. It seems to me that in the selection of this witness he was especially unfortunate, for I think we will all admit that the wine drinking of Noah is one of the saddest incidents in sacred history.

We read that Noah planted a vineyard and drank of the wine thereof and was drunken, and he lay uncovered in his tent and two of his sons took a garment and went backward and covered their father's nakedness, and there it appears they allowed him to remain while he sobered up. Noah was one of the most illustrious men of Bible times. It is said of him that he "walked with God," and was a "man after God's own heart." For a hundred and twenty years while the ark was building he bore without flinching the frowns and scoffs and ridicule of a wicked world, but the insidious power of alcohol made this strong man as weak and powerless as a babe and left him lying in his tent a shame to his family and an object lesson to all future ages, a warning that let a man's position be ever so exalted, even the mightiest of the mighty, he has need to fear and to avoid the allurements of the intoxicating cup.

As his next witness the speaker called on St. Paul, quoting what he said to Timothy about taking a little wine for his "stomach's sake," and his "often infirmities." Now Timothy was only recommended to use wine medicinally not as a beverage and no prohibitionist need take issue with St. Paul on that. But our clergyman could have more fairly represented St. Paul had he quoted what the Apostle said on another occasion: "It is good neither to eat flesh nor to drink wine nor anything whereby thy brother is offended or is made weak."

Next our clerical brother adduced the example of Christ, who made wine out of water at the marriage in Cana of Galilee. There is no evidence that this was intoxicating wine, nor is it likely that it was intoxicating, as it was used on the day on which it was made, no time having been allowed for fermentation. Besides this, it was made out of water; no other ingredient. The most pronounced prohibitionist would hardly be likely to object to that kind of wine.

Mr. CLAYTON. Do not you think that Christ could have made fermented wine as well?

Mr. BAILY. I can only say that with Him all things were possible, but I have confined myself only to what is in evidence.

Another of the clerical gentlemen who spoke yesterday morning claimed that the prohibitory laws prohibited the use of wine for sacramental purposes. I do not think he intended to misrepresent, but he was certainly mistaken. The use of wine for sacramental purposes is especially provided for in most prohibitory laws and is denied in none.

The same clergyman proposed an amendment or proviso for this bill to the effect "that there should be no interference with the private or family use of intoxicating liquors." It seems to me that, even were it within the province of Congress to make such a provision, it is uncalled for, inasmuch as there is no law on the statute books of any State prohibiting the private or family or any other use of intoxicating drinks. The law does not deal with the use but with the traffic only.

A gentleman who told us he was a brewer, but who claimed never to have made a speech before, proved himself an able advocate of the business interest he represented. He told us that prohibition had been a failure everywhere. Some of us think this claim can not be sustained. True, prohibition is not everywhere the eminent success its friends and advocates would like to see; but wherever it is a failure it is largely because of the impediments to its execution which are thrown

in the way by the Federal Government, first, by the issue of tax receipts which, while they do not actually license the sale of liquors, are looked upon in divers cases as a quasi Federal authority; and, secondly, prohibition is often a failure by reason of the impediments which the Hepburn bill seeks to remove.

Representative Scott made a very candid statement yesterday as to the extent to which prohibition is successful in Kansas. I am able to speak for the State of Maine, where I had a summer residence for months at a time, through several years, and where some business interests took me into different parts of the State and afforded no small opportunity for observation. Notwithstanding the limited enforcement in some of the large cities, there are many towns and large sections of Maine where the prohibitory law is well observed and drunkenness is rare. It must have been noticed by you, Mr. Chairman and gentlemen, that the opposition to this bill, so far as it appeared yesterday, came from German-Americans, or those who professed to speak for them.

I have some acquaintance with German-Americans in my native State (Pennsylvania), and I know something about the German settlers in Iowa, having traveled through many sections of that State as far back as 1853; and quite frequently since then, and I may also claim no inconsiderable knowledge of the conditions and affairs of Kansas, having been a member of the Kansas Emigrant Aid Society, which put me in close touch with the affairs of Kansas when it was a Territory some years before the opening of the civil war, a touch which I have had occasion to maintain to this time. And I am quite prepared to say to you that those who spoke yesterday as German-Americans, however well and truthfully they may have represented a large portion of those who are recognized under this designation, do not represent all the German-Americans by any means.

There are men and women of German blood and language, in Iowa and Kansas, who found out that the price of a keg of beer would buy an acre of land—the best land in either of those States, an acre that would produce seventy bushels of corn or thirty bushels of wheat, and many of them were not slow to decide which was the better investment. It must not be forgotten that German influence and German votes largely contributed to the adoption of the constitutional prohibition in Kansas in 1880.

Is it opportune, Mr. Chairman, to put German-Americans forward as advocates of the use of intoxicating liquors at the very time that Germans of the Fatherland are doing so much to get rid of them? One speaker yesterday, in referring to the beer drinking customs of the German people claimed that there was very little drunkenness among them, and still another speaker claimed that there was none.

A traveler who spends his time in the cathedrals, palaces, and art galleries may see very little drunkenness, but let him go into the smaller streets and byways, and into the slum districts, for every city has its slum district, and let him walk through even the principal streets at night, and he will see plenty of drunkenness. It is a fact too well known to be contradicted that in Germany, Switzerland, and Austria, in France and Belgium also, drunkenness is greatly on the increase, and there is an appalling increase in insanity due to alcoholism. It has been found necessary to erect several additional insane asylums and to enlarge some already built to accommodate the increased

number of victims. How to abate these spreading evils is now challenging the earnest attention and skill of philanthropists, scientists, and statesmen throughout the countries of central Europe. So rapidly has this movement, this sense of danger spread, that there are already several hundred total abstinence societies in Germany, Belgium, Holland, Switzerland, Austria, and France.

In April, 1901, an international temperance congress was held in Vienna, at which there were in attendance delegates from every nation in Europe, and last year another congress of like character was held at Bremen. At both of these congresses there were in attendance college presidents and professors, doctors of law, divinity, and medicine, scientists, and statesmen, the most eminent men of the respective nations represented in the congress, and total abstinence, restrictive legislation, and scientific temperance instruction in the public schools were the leading topics under consideration. Permit me just here to call attention to the distinguished surgeon, Doctor Lorenz, who lately visited this country, and who has set his seal to the utility and virtue of total abstinence as a splendid example to his countrymen.

Considering all this, is it any time for us, representing as we claim the foremost Government in the world, to take any backward step? But let me ask why is it, Mr. Chairman and gentlemen, that opposition to this bill appears to come chiefly from one class only of our citizens? Is there no one to speak for the *Irish*-Americans, the Scotch, or the English? No one will deny that the German-Americans are among our best citizens; by their industry, energy, and thrift they have contributed their full share to the wealth and prosperity of the country. But I do not think that those who have spoken for them here have done them good service by giving their beer drinking customs such undue prominence and demanding that the indulgence of these customs must be provided for even at the sacrifice and peril of the larger and more important interests of the country at large.

There flows in these veins the commingled blood of several nationalities. No one of them asks for any special privileges. The different molecules flow together cordially and loyally, content with the larger privilege of being American. I believe that you will agree with me that in legislation we should have in view no class or clan or old-world distinctions, but the laws should conserve and protect alike the welfare of every citizen.

As to the legal points involved in this bill, I will not venture to speak. You have already listened to those whose legal knowledge entitles them to your hearing. It would be presumptuous for me to add anything; but this much from a layman may not be out of place. The bill appeals to me on account of its reasonableness. In very direct language, not, it seems to me, capable of any misunderstanding, the bill removes the chief obstacle which now stands in the way of the execution of State laws relating to the liquor traffic.

A gentleman supposed to be learned in the law told us yesterday that, should this bill be enacted, it would be appealed to the Supreme Court and declared unconstitutional. We were told also—and this was the only objection urged by one of the speakers—that the law could not be enforced. And we were told also that the law would be evaded. Of this last I have no doubt. Is there any law on any statute book touching the liquor traffic which the trade has not tried to evade? That some, at least, of the brewers and distillers are pre-

pared to resort even to bribery and corruption in evading the laws was shown by the circular of certain Kentucky distillers which was read to us yesterday.

And there can hardly be a doubt that should this bill become a law every device that human ingenuity can invent will be resorted to to evade and obstruct its execution. But this should be no reason for disproving the bill. Those whom I have the honor to represent are earnestly in favor of its provisions, and I join with them in the hope that you will report it to the House of Representatives with a favorable recommendation. I believe that if enacted it will create and encourage greater respect for law generally—one of the great needs of our time—and will be especially helpful in many States and communities where the present anomalous position of the Federal Government invites law defiance.

Mr. DINWIDDIE. Mr. Chairman, there are two other gentlemen I would like you to hear. At this point I will introduce Doctor Wilson of the Methodist Episcopal Church.

STATEMENT OF REV. L. B. WILSON.

Mr. WILSON, Mr. Chairman, I do not represent the permanent committee of the Methodist Episcopal Church officially, I may say, but I am sure that the views that I may express have the indorsement of the membership of the Methodist Episcopal Church, which at this time numbers at least 3,000,000 people.

The time allowed me is so brief that I shall venture to suggest simply a single view of the case. It is this.

The question is not a question as to the relative merit of beer or whisky; it is not a question as to the advantage or disadvantage in the use of any alcoholic liquor. As I understand it, it is simply a question as to whether or not a State shall be allowed to exercise its own authority in the maintenance of police regulations within that State?

Now, Mr. Chairman, I suggest simply this consideration, that the laws of the States that are immediately and directly concerned with the proposed legislation express the moral sentiments of those States. It is to be borne in mind that in the expression of that moral sentiment the citizenship of these respective States is willing to forego the commercial advantage accruing to that citizenship in the fostering of the traffic in strong drink.

Now, it seems to me only fair, Mr. Chairman, that if any State, in the rightful exercise of its authority to promulgate and execute police regulations, is willing to forego, so far as its own citizens are concerned, the commercial advantages coming from such a traffic, that it is no hardship to the citizens of any other State, if they are obliged to conform to the same statutes precisely, and if no man in the State of Iowa has the right to engage in the traffic in strong drink, why should a citizen of the State of New Jersey or of New York claim that right, Mr. Chairman?

It seems to me that in the adoption of high moral sentiments, and in the crystallization of such moral sentiment on the part of the individual State, this country, that has always assumed to be broader and higher in the level of its thinking than any of the individual States constituting its sisterhood, should certainly not weaken the force of the moral sentiment of each State, but should lend itself to the execution, the

rightful execution, of the laws which each State has placed upon its statute books.

I have but a moment and I can not further enter into a discussion of the subject.

Mr. DINWIDDIE. I think possibly we have a few moments left, and Mr. Arthur Stabler, of Montgomery County, Md., desires to be heard, in view of the legislation in that county, and I will let him have the balance of the time.

STATEMENT OF MR. ARTHUR STABLER, OF SANDY SPRINGS, MD.

Mr. STABLER. Mr. Chairman and gentlemen of the committee, I am here representing the antisaloon league of Montgomery County, Maryland. I have here a little history that leads up to the present situation in Montgomery County. I will not tire you with it, but will only read two or three pages of what I jotted down.

Sandy Spring is an old Quaker settlement in Montgomery County, Maryland. The pioneer settler was James Brooke, who received a grant of 1,900 acres of land from Lord Baltimore in 1728.

The present Friends meeting house was built in 1817, and in 1837, by special act of the Maryland legislature, a law was passed prohibiting the sale of intoxicating liquor within two (2) miles of the above-mentioned Friends meeting house.

The next succeeding session, amended the law, by including all of that portion of Montgomery County within 2 miles of the Brookville Academy. The two institutions were just 4 miles apart, thus making the prohibited locality 4 miles wide and 8 miles long.

This was the nucleus and in and around this old settlement of Sandy Spring and Brookville the moral sentiment necessary to maintain a local option law was encouraged and fostered, until its example and precepts permeated our entire county, its benign influence was felt in every community.

Our people generally were plain and substantial farmers and turned their attention to raising grain and hay and stock raising and dairy farming.

Our land responded to good treatment, and produced liberally, and our thrifty, industrious, and intelligent people gained in material prosperity, and with it grew the moral sentiment, and in 1876 our people elected a delegation to the lower branch of the legislature favorable to local option and petitions were liberally signed, and forwarded, until our senator had to heed the warning of over 7,000 of his constituents and help pass a law, allowing the voters of the county to decide the question.

They did decide it, and out of a vote of about 5,000 passed at a Presidential election, the local option vote stood in round numbers 3,300 for and 1,600 against the law.

The people decided the question and they spoke in no uncertain sound, and they said "saloons must go."

There was no holding back, every election district in old Montgomery gave a good majority and the "saloon did go."

The temptation though was great and there would be violations of the law. The speak easies, like the moonshiner's still, would make trouble, but the moral sentiment was behind the law, the conviction was there, and there has been no lack of courage. Our good women

have helped to sustain our good men, and we are enforcing the law to the extent that the violators are coming into court and pleading guilty, with the hope of a smaller fine being imposed by our honorable court, and now for the first time we have a prosecuting attorney and sheriff both pledged to deal with the offenders and treat them as they do all other offenders and lawbreakers.

Now, gentlemen, we ask you to give us your indorsement and assistance, report favorably upon the Hebron bill, and such assistance with our law, as we expect it to be amended, will enable us to seize the goods when it comes into our midst, purchased and brought there to sell in violation of a law passed by the people.

They are contraband goods and should be confiscated, and will be confiscated if we have the assistance and encouragement, furnished by the strong arm of the Government.

Our people are trying to be good, and we want you to help—it has been truly said it is a pleasure to help those who are trying to help themselves.

We are not concerning ourselves about the constitutionality of the law, as ours was passed by the people, it is worked by the people, and for the people.

If the Hebron-Doliver bill is passed by Congress it will prevent Kentucky, West Virginia, Baltimore, and Washington from sending whisky into Montgomery County in the original packages, or in any shape, to be sold in violation of a law that has done more for our county and people than any other we have had enacted and enforced.

STATEMENT OF MR. DINWIDDIE.

Mr. DINWIDDIE. Mr. Chairman, I think I have just one suggestion to make. I appreciate the courtesy of the committee. I think we have two or three hours to the good, if we were dividing time equally. But that is not necessary. I believe the facts which the committee wants to get and the information you want to get are largely before you. I think the speeches that have been made by the legal friends on this side and the other side are sufficient along those lines. I only want to correct one impression that I think possibly may have been given by the people on both sides, namely, that this is a prohibition matter.

Judge Smith in his able argument disposed of that. It is not a prohibition matter, it is not a question of temperance in one sense. It is simply a question of the United States permitting state legislation to be effective on this question.

But the point that I want to bring out is that although Iowa has been brought very largely into prominence in connection with this measure, it is a measure that concerns every State in the Union, and from the States generally there is a very large and insistent demand for the passage of the bill. It concerns my State of Ohio. I know the public sentiment of Ohio well enough to know that they are practically as largely concerned in the passage of this measure as they are in Iowa. It concerns every State in the Union, no matter what its policy on this question may be, and I simply want to leave that final word, that this question is of vital interest to every State in the entire Union.

Mr. BARTHOLDT. Mr. Chairman, twenty-one members of the House

of Representatives have to-day heard, and I was placed in charge of the time in opposition to this bill, and they have come to me and asked me for the privilege of being heard. You know it was a physical impossibility to hear them in the time allowed for this bill, even as much time as the committee has given to the discussion of this matter, and these gentlemen (twenty-one in number) ask to be heard.

Most of them, I believe, also have applied to the committee. I therefore request that they be heard at a future time. They have constituents, and they have just now, in the past few days, heard from these constituents. The fact is that there has only been one side that has known anything about this, for the reason that there has been a bureau that has worked up this sentiment.

Mr. LITTLEFIELD. I want to say, Mr. Chairman, that Brother Otjen is here, and that he has some telegrams from his district that he would like to present to the committee so that they may go into the record. Inasmuch as it will only take about a minute and a half, I would ask unanimous consent on the part of the committee to suspend for that purpose.

Mr. OTJEN. Mr. Chairman, these are telegrams I have just received from my district. I will read them to you:

MILWAUKEE, WIS.

Congressman THEODORE OTJEN,
Washington, D. C.

Kindly use your efforts to oppose Hepburn bill of the 20th.

JOHN BIRTH & COMPANY.

Then another one.

Hon. THEOBALD OTJEN,
House of Representatives, Washington, D. C.

We respectfully request you to appear before the House Judiciary Committee at 10.30 o'clock, January 20, to oppose the Hepburn bill.

A. BRESLAUER COMPANY.

Another one.

MILWAUKEE, WIS., January 18.

THEODORE OTJEN,
House of Representatives, Washington, D. C.

Please use your influence against Hepburn bill, January 20, House Judiciary Committee.

WEIS BROTHERS.

Another one.

MILWAUKEE, WIS., January 18.

Hon. THEODORE OTJEN,
House of Representatives, Washington, D. C.

We most respectfully pray you to appear before the House Judiciary Committee at half past 10 o'clock, January 20, in opposition to the Hepburn bill.

NATIONAL DISTILLING COMPANY.

Another one.

MILWAUKEE, WIS., January 18, 1904.

Hon. THEODORE OTJEN,
Member of Congress, Washington, D. C.

Kindly appear before the House Judiciary Committee, Wednesday morning, the 20th instant, and oppose the Hepburn bill.

FIGGE DOYLE COMPANY.

*

Another one.

MILWAUKEE, WIS., January 18, 1904.

Hon. THEODORE OTJEN,

1716 Corcoran Street, Washington, D. C.:

Hepburn bill comes up Wednesday, 20th instant, half past ten o'clock. Kindly appear before House Judiciary Committee and do everything in your power to defeat same.

J. P. KISSINGER COMPANY.

Another one.

MILWAUKEE, WIS., January 18.

Hon. THEODORE OTJEN,

Washington, D. C.:

Kindly appear before the House Judiciary Committee at half past ten o'clock, 20th instant, and use your full power to oppose Hepburn bill, which means national prohibition.

The WILLIAM BERGENTHAL COMPANY.

Another one.

MILWAUKEE, WIS., January 18, 1904.

Hon. THEODORE OTJEN,

Washington, D. C.:

We urgently request you to use your influence in defeating the Hepburn bill, which will come up before the Judiciary Committee, Wednesday at 10.30 a. m.

EMIL KIEWEET COMPANY.

Another one.

MILWAUKEE, WIS., January 18, 1904.

Hon. THEODORE OTJEN, Washington, D. C.

Use your influence against Hepburn Bill, before Judiciary Committee, House of Representatives, Wednesday at 10.30.

NEWMAN & FRISCH.

(Adjourned.)

[Continuation of argument of Hon. Wm. Hough, additional argument of Mr. Robert Crain, and statement of Hon. J. A. Kelliher will be found on page 275 et seq.]

**SUPPLEMENTAL STATEMENT OF REV. EDWIN C. DINWIDDIE,
LEGISLATIVE SUPERINTENDENT, AMERICAN ANTI-SALOON
LEAGUE.**

Mr. Chairman and gentlemen of the committee, I am not going to take much of the time of the committee. I want to say in this connection, however, that at the earnest request of the opponents of the measure, the hearing was set forward six weeks, and then three entire days devoted to the discussion of this matter before the committee, and then by our courtesy as proponents of the measure, the opposition took from an hour and a half to two hours more than we had, and they have practically occupied all of to-day, and we had hoped that by limiting the time we could permit the committee to take its action upon the matter either pro or con—and we sincerely hope pro—so that the House could pass upon the bill itself.

The last gentleman who has taken his seat—I hope that he is still in the room—has not fairly stated the case, if the statement is made that a very inconsiderable part of any State, or even Massachusetts, is in

favor of this bill. I know very much about what the sentiment in Massachusetts is in this matter, and I have no doubt certain merchants in Boston do not want this measure passed. Those merchants in Boston are chiefly those who are engaged in the systematic attempt to unload these liquid goods in Maine, Vermont, and New Hampshire contrary to the will of the people of those States, and Mr. Tirrell, of Massachusetts, was here a few days ago and said to the committee what Massachusetts did think about this measure from his knowledge, and I submit that that is entitled to equal consideration as to the status of Massachusetts in regard to the matter.

Mr. Crain stated a few moments ago that he had not heard anything in respect to the measure except from Iowa and Kansas. I am sure that the proponents of the measure have endeavored to make plain what is the absolute truth in the matter, that the other States in the Union, and I think we may say without exception—particularly is this true of upward of 35 of them—are as vitally interested in the passage of this measure as is Kansas or Iowa, for every State, barring three or four, has legislation upon this question which is affected by these outside shipments of liquor in a sense in contravention of State and local legislation. Not that these States have prohibitory legislation, but they are like my State, Ohio, which has not a prohibitory law, but where we have a large sentiment in the State in favor of saloons and of drinking, and where the State for years past has not made any effort to prohibit the liquor traffic in toto, but where they have expressed their local sentiment and put the question in such shape that the people may decide in their own localities what they want on this measure; and they are vitally interested in this proposed legislation, and so are the other States of the Union, and it is not a question of prohibitory legislation, contrary to what these gentlemen have said.

I have an example here stated by our attorney in Iowa, and Iowa is not wholly prohibitory; it is modified by the mulct tax in Iowa, so that in many sections of Iowa liquor is locally sold under the operation of the present law. Outsiders have sent their order takers into Iowa to take orders, even in the saloon districts, to avoid the payment of the mulct tax, which is not a prohibitory measure. A man can circumvent these other laws under the present legislation as it is interpreted.

The CHAIRMAN. If it would not interrupt you I would like to get your views on this. I would like to ask you a question which I asked of a lady who came here yesterday. She stated, practically, that she wanted a law passed to help the local-option counties in Ohio. I asked her, as I would like to ask you now, how it is going to help conditions in Ohio, and I am limiting it now to Ohio, to pass this bill? That is, what is to prevent a resident of a local-option county from getting his liquor from Dayton, Cincinnati, or Cleveland?

Mr. DINWIDDIE. We manage that entirely by State legislation.

The CHAIRMAN. I asked her and she said she did not know.

Mr. DINWIDDIE. I do. We manage that entirely by State legislation, which we are entirely competent to do.

Mr. SMITH, of Kentucky. Let me supplement that.

Mr. DINWIDDIE. Do you mean the question or the answer?

Mr. SMITH, of Kentucky. Let me supplement the question by another one along the same line.

If, as is indicated in these decisions of the Supreme Court, interstate

commerce is permitted from its beginning to its delivery to the consignee, or at the place of consignment, what is to prevent anyone within a local-option district in Ohio from giving an order to a liquor man in Kentucky and having the liquor shipped to him?

Mr. DINWIDDIE. For his own use?

Mr. SMITH, of Kentucky. Yes.

Mr. DINWIDDIE. It can be done.

Mr. SMITH of Kentucky. Whether for his own use or not.

Mr. DINWIDDIE. You are right about that. It can be done. Then the question whether it is for his own use or for sale within the State arises after that?

Mr. SMITH of Kentucky. Yes.

The CHAIRMAN. I would like to lay aside the legal aspect of those questions, and ask you that question, how is it going to help the State of Ohio to-day to pass this law, as long as you concede that the liquor is sold openly in Ohio under this law to-day?

Mr. DINWIDDIE. But it is not so sold in territory which is under the operation of local option legislation.

Mr. DE ARMOND. In other words, the State legislature can prohibit other parts of the State from shipping liquor into that local option district?

Mr. DINWIDDIE. Absolutely, and States frequently do it.

The CHAIRMAN. That may be true, but how is it to help you as far as this law is concerned? There is nothing to prevent them from going to Dayton and getting it?

Mr. DINWIDDIE. No, sir.

The CHAIRMAN. Suppose this law was passed to-day as you want it exactly. How is it to help conditions in Ohio?

Mr. DINWIDDIE. We are not asking this to prevent people in Dayton from shipping liquor over into another county. What we want is that liquor dealers in Wheeling, W. Va., shall not be allowed to ship liquor over into Harrison County and store it there and give it out to X, Y, and Z. Under the present law it has to get into the hands of X, Y, and Z before the State jurisdiction can attach. That is the difficulty.

Mr. PARKER. Why can not a Dayton man do that now? Can he not ship to the next county?

Mr. DINWIDDIE. I find that those men have not attempted to do it systematically as they have elsewhere.

Mr. PARKER. Is there any law to prevent it?

Mr. DINWIDDIE. There is in many of the States.

Mr. PARKER. Can they do it?

Mr. DINWIDDIE. Yes, sir. They can handle that under their State law. We are not asking you to do something for the State that the States are competent to do for themselves. Congress is not competent to do that for the States. As to the matter of the internal liquor traffic, even some of us who are laymen and are not lawyers, know that that is held absolutely in the hands of the States under their police powers. What we want is to reach and stop the peripatetic dealer who operates under the guise of interstate commerce, and does what a citizen of that State or that community is not permitted to do under the laws of the State; and they rest on the Supreme Court decisions in construing the verbiage of the Wilson law.

Mr. DE ARMOND. That is, that it is not delivered until it is delivered?

Mr. DINWIDDIE. That it has not "arrived" until it is delivered to the consignee.

Mr. DE ARMOND. Yes, and then it is gone.

Mr. DINWIDDIE. Yes, sir; they lose sight of it.

Mr. HENRY, of Texas. Wherever they ship it into the local option precincts they say that it is interstate commerce.

Mr. DINWIDDIE. Yes, sir; and they override the laws of the State in that way.

The CHAIRMAN. What is the difference between a man in a local-option county drinking whiskey that he gets from Kentucky or from Dayton?

Mr. DINWIDDIE. There is no difference.

The CHAIRMAN. You are discriminating against local dealers and in favor of nonresident dealers.

Mr. DINWIDDIE. No, sir; we do not want that. We do not want any discrimination in favor of the outside dealer. The present discrimination is in favor of the outsider, unquestionably. We do not want the outsiders to be permitted to do what we forbid our own citizens to do.

The CHAIRMAN. I understand that the sale of liquor is legalized in the State of Ohio?

Mr. DINWIDDIE. Except as modified by the action of the people in various communities.

The CHAIRMAN. I understand you have in the various towns—

Mr. DINWIDDIE. Local option.

The CHAIRMAN. Yes. And a man living in a local-option county can buy liquor in Cleveland or Dayton.

Mr. DINWIDDIE. I will not say in Ohio. That is my State, but I am not familiar as to the exact verbiage of the law. But under certain circumstances he can not. He can not in Iowa or West Virginia. A man can not live in a local-option county in West Virginia and have liquor shipped in to him from any county in West Virginia; but until this law passes a man can ship it from another State into that local-option county, and you are permitting outsiders to do what the citizens, the residents, of the same State can not do. It is in favor of the outside man and against the man who lives in the State.

This question hinges on the desirability and necessity of this sort of legislation.

Mr. DE ARMOND. That is one thing.

Mr. DINWIDDIE. I do not mean the question before the committee.

Mr. SMITH, of Kentucky. I think one of the important questions in this connection is the power of Congress to act.

Mr. DINWIDDIE. Yes, sir; I mean the important question that is being raised. I want to read in this connection a letter. Of course Iowa and Kansas have been brought forward and emphasized here, not because they are the only States involved, but because Iowa, in particular, is the State whose legislation has been most largely involved in the courts, and therefore the decisions and references have been very largely in regard to Iowa. That is one reason why Iowa has been given, perhaps, undue prominence in this matter. This letter is from the attorney of the Anti-Saloon League of Iowa.

DES MOINES, Iowa, November 27, 1903.

Rev. EDWIN C. DINWIDDIE,
Bliss Building, Washington, D. C.

DEAR SIR: Replying to your inquiry of the 24th, will say that the interstate-commerce law has enabled the express companies to turn their local offices into original-package liquor stores, and, strange as it may seem, most of them have not been slow to avail themselves of the opportunity. Their local agents are encouraged to take agencies for breweries and distilleries, and many of them are acting as such. A bootlegger, as we call these peripatetic liquor dealers in Iowa, will order a case of beer from a dealer beyond State lines, as he has a right to do, provided the liquor is for his own use, but usually orders C. O. D., most of his class never having sufficient money ahead to send cash with the order. When his case of beer arrives, he goes through the stores and offices, taking advance orders for a bottle at a time until he has collected sufficient money to pay the C. O. D. charge. Then he takes the case out of the express office, fills the orders he has taken, and sells the remainder of his case at his leisure. In many of the smaller cities of Iowa there are men whose sole employment is this kind of business.

We have a statute in this State which makes possession of intoxicating liquor in any public place *prima facie* evidence of unlawful intent. The practice is to issue a search warrant and seize liquor found in a public place, and thereupon the burden is on the owner to show the innocence of his ownership. Seizure by search warrant is the most effective weapon against small violators.

There are a number of express agents in this State who make a practice of keeping considerable quantities of liquors on hand, consigned to fictitious persons. A solicitor has a list of those packages and goes around among the drinkers and takes orders. The drinker appears and gives the fictitious name and receives the package. A banker at Grinnell was convicted by the district court of Poweshiek County of maintaining a liquor nuisance in his bank by negotiating liquor bills of lading in this manner. Of course this last scheme is a violation of law, and when the facts can be proven we have no difficulty with that class of violators. The trouble is, however, that when the liquor is seized the interstate commerce plea is brought forward and overcomes the presumption of guilt raised by the Iowa statute, and there is a total failure of evidence. If Congress will remove all national protection to this class of merchandise, we think that our State at least can adjust its local laws so as to largely check the abuses above mentioned without doing anyone any injustice.

Very truly, yours,

DUNSHEE & DORN.

I want to call the attention of the committee to the fact that I submitted as part of my remarks, on the 2d, 3d, and 4th of March, a circular letter sent out for the purpose of getting express agents to act in this capacity, and Judge Smith called attention to the fact that so flagrant had such practices become that one of the express companies had discharged one of its employees because he had refused so to act.

Mr. SMITH, of Kentucky. Is that state of affairs due solely to the inefficiency of the lack of execution of State laws?

Mr. DINWIDDIE. No, sir; because they find upon apprehending those people and bringing them before their State courts that they can convict them under State law so long as it is not an interstate-commerce shipment. But we find that they plead the interstate-commerce act of the United States, and then our State courts are overridden, and the case is knocked out on the ground that the higher courts have held that it is permissible.

The CHAIRMAN. As a practical question, and we are very much influenced by what we see, I will say that I was in Iowa, and was for three weeks in the same town, and I did not see any jugs of whisky around in the express office; but between the hotel and the express office I took a friend into places which were wide open, and no attempts made at concealment.

Mr. DINWIDDIE. There was not any necessity. There was not any occasion for the bootlegger in such a place, I should say.

The CHAIRMAN. What are you complaining against the express office for, when here are these saloons, as I say, wide open?

Mr. DINWIDDIE. In a place like that, I am making—

The CHAIRMAN. I took a man with me who is called a temperance crank—I never use that term against any one. I took him to convince him. He would not believe it until he saw it. We went there to make a study of the question.

I am trying to get at a solution of this question, and I want to know why you should spend so much time talking about the jug and the express office when you can find liquor for sale on every street in the town?

Mr. DINWIDDIE. But you can not do that in every place.

The CHAIRMAN. I was in several places, and there was no difficulty at all about getting liquor anywhere.

Mr. DINWIDDIE. Yes; and Sioux City is notorious for lawlessness in that way. A man was murdered there who was active in the prosecution of cases there. He was murdered by a brewer, who practically confessed it and was cleared by a jury. That is one of the worst places on this question in Iowa.

The CHAIRMAN. You are talking about the express office, and I want to know why that question should arise when you can get liquor on almost every street in every town in Iowa.

Mr. DINWIDDIE. I would not say that that could be done. I know that it can not be gotten in many cities. Iowa is not a prohibition State in those places where you were—Davenport, and Des Moines, and Dubuque. They have those places, just as we have them in Ohio.

Mr. PARKER. Why, the constitution prohibits it absolutely.

Mr. DINWIDDIE. Except as modified.

Mr. PARKER. The law has never been modified.

Mr. DINWIDDIE. If I remember it rightly there was a flaw in the adoption of the constitution, and some years after that they modified the State law of Iowa in this way, by providing that under certain conditions, by securing a certain number of petitioners, they could sell liquors, and under that they sell liquors in the larger cities of Iowa. It would not be safe to say that Iowa practically is much more of a prohibition State, in one sense, than Ohio is. We have certain places in Ohio that are prohibition, but the State is not. The difference is this: Iowa is under prohibition except as local public sentiment permits liquor selling under certain conditions. Ohio permits saloons and taxes them, but under township and municipal local option, the people can and do exclude them from many portions of the State.

Mr. BRANTLEY. There is one question I wanted to ask you. You are no doubt familiar, and in a position to be familiar, with the decisions of the courts on the sale of liquor. Now, this circular that you incorporated in your remarks, which have been printed, that circular offered the express agents a commission on all liquors that they should sell. Suppose that an express agent solicits an order at the place of his residence for a company, transmits that order, collects the money from the man who gives the order, puts a part of that money in his own pocket as his commission, and delivers the liquor and sends the balance of the money to the company, have you any decision to the effect that the selling of that liquor is in violation of the State law?

Mr. DINWIDDIE. No, sir; it has been decided years and years ago that the State could not interfere with a company's agent in taking the

order. One has a commission and the other has a salary. I do not know that there would be a vital distinction there.

Mr. LITTLE. I can not see any.

Mr. DINWIDDIE. That would go to the validity of the sale.

Mr. BRANTLEY. Have you any case on that?

Mr. DINWIDDIE. No, sir; I have not.

Mr. SMITH of Kentucky. Here is a question. If it is permissible for the whisky dealers in other States to have sales agents, what more objection can there be to an express agent becoming the agent of one of them than to anybody else becoming such agent, if he has the time to look after it?

Mr. DINWIDDIE. I confess that we have not drawn that distinction, because we are opposed to both being done in the States where the citizens have said that they can not do it.

Mr. BRANTLEY. Have there been any prosecutions for that?

Mr. DINWIDDIE. Yes, sir, there have been; and they have been variously, in the lower courts, convicted. But under the rulings of the courts out of Iowa they would be convicted right along. Under our rulings in Ohio they have been convicted. But when they come up, if they are wise enough to plead interstate-commerce shipment, they get free every time. That is where our difficulty is. We do not ask to be helped to enforce State legislation.

IOWA CITY, IOWA, November 28, 1903.

EDWIN C. DINWIDDIE.

DEAR BROTHER: Our State law, by reason of the interstate commerce law, is violated in many ways, three of which I designate below.

First. Men come from adjoining (or other) States as "order takers." In the prohibition counties they will even go into the country, possibly to the cornfields, with a variety of samples, giving them to men and boys and inducing them to give them an order. Many buy who otherwise would not buy at all.

Second. These "order takers" go into the license counties and in the cities or towns sell to individuals (bankers and business men) by representing to them that they can sell liquors for less money than they can at the saloons or druggists where a license is paid.

Third. Liquors are shipped to the express offices. I have known of from 50 to 100 packages being in an express office at the same time. These same "order takers" will see a man and ask if he "wants a No. 1 drink for a low price; if so, you can call at the express office for a package sent to Thomas Jones or Dick Hughes or other assumed name." Any man can go to the office, pay for, and obtain the liquor.

Yours,

H. H. ABRAMS,
State Superintendent of Legislation.

Now, these men who have had a lot of experience along this line stated that that was done; this same thing was stated by Colonel Hepburn and Judge Thomas and others who were familiar with this situation. That is not done by the fellow going out and delivering the thing itself. They could probably reach him under the law for a resale, if he did that; but it is done in a roundabout way, by consigning to themselves, and then giving over the bill of lading to somebody who will come up and pay the express charges and the C. O. D. charges and the cost of the liquor; or to X or Y or Z, or to John Jones or anybody else, and in that way they evade the laws of the State or locality, and successfully, under the decision of the court in the case of *Rhodes v. Iowa*, wherein it was held that the interstate commerce shipment—I want to emphasize that fact—under the terms of the statute, did not cease until delivered to the consignee. That is an important thing to emphasize there, that it is on the verbiage of the

Wilson law that the Supreme Court rendered the decision that liquor could be shipped in in this way.

What the Supreme Court would decide if Congress passed this bill which gave the State jurisdiction before and after delivery I do not think any man, no matter how astute he might be, is prepared to say. I do not even think that my friend Judge Hough can say, with as much authority as he has, that the Supreme Court will declare such a law as we press for unconstitutional, and I base this statement upon this fact, that when this question was before Congress last year, was before the Senate Committee on Interstate Commerce, Judge Hough said, and I quote directly from his statement before that committee:

No one would think of urging a violation of a State statute, and is the Constitution of the United States to be held less sacred? The authority given Congress by the Constitution is to regulate commerce between the States, and it is beyond question that the power to regulate does not include the power to prohibit. (Hearings, p. 45.)

And I may say that within ten days after this statement was made by the judge with just that positiveness, that this could not be declared constitutional, the Supreme Court came out in the lottery cases and decided the converse of that proposition, and decided that that was exactly what Congress could do and had done in many cases. Up until the time of the lottery cases the opponents of this measure predicated their opposition upon the proposition almost entirely that the power to regulate interstate commerce, which was conceded to be vested in Congress, did not include the power to prohibit, and within ten days after that the Supreme Court, speaking through Mr. Justice Harlan, said that that was precisely what Congress could do.

The CHAIRMAN. You are speaking about the embarrassment the decision in the case of Rhodes gave you, but you did not go further and state what the Supreme Court decided in that particular case. Now, in Rhodes *v.* Iowa they simply held the consignee was entitled to receive the goods. That was all they decided?

Mr. DINWIDDIE. Yes, sir.

The CHAIRMAN. Now, in the next case, we will say, to carry the argument along, the party attempted to sell after the goods were delivered to him.

Mr. DINWIDDIE. That was in the Rahrer case, before the Rhodes case.

The CHAIRMAN. That man, the Supreme Court decided was entitled to receive his goods, undertook to sell. That is the fact, is it not?

Mr. DINWIDDIE. Yes, sir; that he can not do.

The CHAIRMAN. And the State punished him, and the Supreme Court of the United States affirmed the judgment on the ground he had no right to sell.

Mr. DINWIDDIE. I am perfectly clear on that.

The CHAIRMAN. That is what I was calling your attention to this morning—that a man can not sell to-day in the States which prohibit, notwithstanding the power of interstate commerce.

Mr. DINWIDDIE. But they do it, and they can do it under the subterfuges they have devised.

The CHAIRMAN. What subterfuge?

Mr. DINWIDDIE. Just this, that the express agent, the representative of the common carrier carrying interstate commerce shipments, operates as a representative of liquor men and has the goods in his

possession as agent of the express company, holding these goods for the carrier as warehouseman. Their relation to the shipment as a carrier has practically ceased, but in their character as warehousemen, under the Rhodes decision and the methods of evasion through indiscriminate delivery they become practically the consignee. There is no consignee at all, and any man comes up, gets the goods, and goes away.

The CHAIRMAN. That is the decision under the Iowa law, and that is the reason I invited your attention to that law, to let you see that sale is illegal to-day.

Mr. DINWIDDIE. That is the Iowa law, but in attempting to enforce that Iowa law the violators rest under the protection of the decision of the Supreme Court in the Rhodes case, and the Iowa or State law falls as it would not fall after the passage of this act. That is all.

Mr. BRANTLEY. Going back of that, I want to ask you if you draw any distinction between the power of Congress to regulate or prohibit and its power to delegate to the State the right to regulate and prohibit?

Mr. DINWIDDIE. Most assuredly. As a layman, and I think a lawyer would say the same thing, there can hardly be a question but that this law might be declared unconstitutional. I believe it will be declared constitutional. I believe—I know—that we ought to go to the length of trying to get the States relieved of this trouble, and the Supreme Court has said in the *Scott v. Donald* case, as you will remember, that this ought to be done, and that we ought to go to the extent of stretching a point to get relief for the evils complained of. But the Chief Justice's remarks in the *Rahrer* case that the Wilson law was constitutional are in direct answer to Mr. Brantley's question, and he went on to say that it was not a delegation of power. I quoted this decision in my opening remarks on March 2. And, as Judge Smith said the other day, it is rather an exercise than a delegation of Congressional power.

You may remember that for years and years, almost from the foundation of the Government down to the time that the transportation case in Iowa came up, a sale by the consignee, or the importer—that is probably a better word to use—the sale by the importer of articles from sister States, of foreign articles, was considered an essential; it was considered an integral part of interstate and foreign commerce; and yet Congress, in the exercise of its power to regulate interstate and foreign commerce, by the passage of the Wilson bill, withdrew and intended to withdraw this essential element.

It was the right of the consignee to sell the goods in the original package after they were received by him. Then when they came to investigate it—as you know every law must be interpreted on some specific point—when they came to determine a particular case, the case of *Rhodes v. Iowa*, and had under consideration the language of the act, they construed the language “arrival within the State” to mean “after delivery to the consignee.” But that was simply their decision as to what Congress meant by that verbiage.

Mr. SMITH, of Kentucky. And in that connection take the language used in the case of *Vance v. Vandercrook*, where it says:

But the weight of the contention is overcome when it is considered that the interstate-commerce clause of the Constitution guarantees the right to ship merchandise from one State to the other and protects it until the termination of the shipment by delivery at the place of consignment.

Now, the Supreme Court says it is the Constitution that does this, and if it is the Constitution that does it, how can Congress abandon or surrender that protection which is afforded by this clause of the Constitution?

Mr. DINWIDDIE. I may say to Mr. Smith that the court did not say in *Vance v. Vandercook* case that the right to import for personal use was one derived from the Constitution, which was inalienable and could not be abridged by legislation. The court said (p. 452-453 in 170 U. S.): "But the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States and does not rest on the grant of the State law." That is, it is one the States can neither grant nor deny. It is not conceded that Congress can not. I am frank to say that I have heard lawyers, lawyers of ability, use the same language about Congress abandoning or delegating its power.

I am frank to say you can not state with definiteness what the court is going to say. If you have read all the opinions—the majority opinions, I do not speak of the minority ones—you will see it is an absolute impossibility to say that the court, because of what it has decided in these other cases, is going to decide the constitutionality of this law one particular way; and we do not claim it on our side, and I do not think there is anything to justify the sweeping statement that the Supreme Court can not do anything else but decide this unconstitutional.

The CHAIRMAN. You do not think the court has been inconsistent, do you?

Mr. DINWIDDIE. No, sir; I would not say that. But you take the language in the case of *Vance v. Vandercook* and in the case of *Rhodes v. Iowa*, and I say that the statements in the opinions of the court are of such a nature as to give us no rule by which to say that they are going to declare this law constitutional or unconstitutional.

The CHAIRMAN. That may be so; but I must say that after reading all those cases I think they are in harmony.

Mr. DINWIDDIE. I think there has been harmony in the court since they reversed themselves in the New Hampshire license cases a number of years ago, where, in interpreting the present law, they said that where Congress did not speak the States could act. I would not say that there had not been harmonious decisions from that time to this, but I say that the statements of the opinions in *Rhodes v. Iowa*, and *Scott v. Donald*, and *Vance v. Vandercook*, and the lottery cases are not of such a nature as to enable us to say that the court can not do anything but declare this to be unconstitutional. In my judgment these cases, taken with the Rahrer, indicate exactly the reverse.

The CHAIRMAN. From your view the Supreme Court would have to reverse itself on a point upon which the court is unanimous, because in the case of *Vance v. Vandercook*, if you will look at it, you will see that the right of a person living in Iowa to send to Kentucky to get his liquor, and the further question whether that man in Kentucky can ship his liquor into Iowa—that is, ship in blind pigs, as they call them—is considered, and the Supreme Court held unanimously that the individual could have that liquor shipped to him for his own use. The majority held that they could not ship unless it was for the consignee, but the minority of the court held that on account of the interstate-commerce clause the State could not interfere and that Congress could not give them the right to interfere. But the majority of the

court was consistent in holding that it would be a violation of the State law to ship unless there was a bona fide consignee. I am satisfied that you do not understand as you would if you had carefully studied those cases.

Mr. DINWIDDIE. I am not here to go into the legal phases of the question any more than I have, for the reason that I do not claim to be expert on these lines; but I have rested, and with some reason, on the statements of Judge Thomas of this committee, Judge Smith, and of Colonel Hepburn, who have all had experience in handling these cases in court, and with the full determination on the part of the bench and of the people to enforce legislation, and they tell us, with others in many States, that they can not secure proper remedy under State legislation, not because the State laws are not sufficient, or because there is not sufficient local sentiment to enforce them as well as any criminal laws can be, but because of the interstate commerce clause of the Constitution.

The CHAIRMAN. I called your attention to that because you are very earnestly asking the committee to-day to pass this law, stating that you can not judge from the past what the Supreme Court will do. From the decision that Judge Smith has just read you it was decided that the individual derives from the Constitution the right to do what you insist now he ought not to do. Here is the unanimous decision of the court, recently made. Now, you say to us, "Pass this law, trusting that the Supreme Court will reverse itself," because they would have to reverse themselves on that proposition.

Mr. DINWIDDIE. I have not heard any intention expressed to stop a bona fide shipment for personal use, and I am frank to say—I can see this as a layman even—if the State would attempt to do it, if *Vance v. Vandercook* is as you conceive it to be, and is not reversed by the Supreme Court, a State could not do it.

The CHAIRMAN: There is the language of the Supreme Court just as Judge Smith reads it to you—I have read it many times, that the individual derives the right from the Constitution. If he does so, Congress can not take it away.

Mr. SMITH of Kentucky: This makes no distinction in this language. It says:

The interstate-commerce clause of the Constitution guarantees the right to ship merchandise from one State to another, and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress, which does not allow State authority to attach to the original package before sale, but only after delivery.

Mr. DINWIDDIE. It seems to me you forget that decision was made by construing the words in the Wilson law "arrival in such State," etc., to mean, "after delivery to the consignee." We avoid such interpretation of the Hepburn bill by saying "*before and after delivery*," and there is the clearest sort of suggestion—in fact, almost a direct statement—in the Ralner decision that Congress can divest interstate commerce original packages of their character as such whenever they get within the bounds of the State—even before delivery to the consignee. Now, you see how easy it is to have a different opinion, because Judge Hough said that Congress could by one sweeping act of legislation stop absolutely the interstate shipment of liquors.

Mr. HOUGH. I said that until Congress attempted to do that then

this individual in the State had the right to receive, and the shipper in another State had the right to have it delivered to the consignee.

Mr. DINWIDDIE. That is true.

Mr. HOUGH. I never have conceded that Congress has the right to prohibit an interstate shipment of any kind. I have taken the position and have sustained the proposition that it has not the right under these decisions, two of which are original Supreme Court decisions and one an Iowa decision; and I apprehend if Congress should pass a law saying that there should be no interstate shipments of any kind whatsoever, there would be no hesitation on the part of the court in saying that that is unconstitutional. If they have a right to prohibit, they could absolutely prohibit the transportation of every article, and thus destroy the very thing which the delegation to Congress of the power was intended to conserve and preserve.

As to the lottery cases, the conclusion to be drawn from that decision is to the effect that it may sometimes amount, as Justice Harlan said, to prohibition; but I am satisfied if you eliminate the lottery decision and then observe the difficulty from an *a priori* standpoint you will reach the conclusion as lawyers that aside from the definitions given by the lexicographers it does not give a power to absolutely prohibit. Regulation comprehends continuity; prohibition contemplates cessation. They are absolutely antagonistic, and I am afraid that that can not be adhered to by the Supreme Court.

Mr. SMITH. I have had the impression that Congress would have the right to prohibit the traffic in malt liquors.

Mr. HOUGH. Have you an impression that Congress would have the right to destroy the commerce in everything?

Mr. SMITH, of Kentucky. No, sir.

Mr. HOUGH. Now, Congress has no police powers, and therefore when they act as to any commodity it can not be for the benefit of the health or morals of the community, because a thing which is based upon that alone is relegated to the police power, and therefore they have no greater power in regard to intoxicating liquors than in regard to tobacco or cigars, or in reference to coal or flour or anything else; and therefore if you proceed and follow that argument to its logical conclusion, if you assert that it has the power to prohibit the traffic in one thing you must necessarily concede the power to prohibit the traffic in everything.

Mr. DINWIDDIE. How about the lottery cases?

The CHAIRMAN. I want to see how you harmonize a statement like this. Now, you say that you are not opposed to these people having liquor for their own use. I want to find out what you are seeking.

Mr. DINWIDDIE. I will say, Judge, that I will answer your question if I can, but I want you to understand that I am not claiming to be a lawyer.

The CHAIRMAN. Now, suppose the State of Georgia passed a law to-day absolutely prohibiting the sale of intoxicating liquors in the State; I will say "absolutely prohibiting." Now, under the decisions of the Supreme Court of the United States a person living in Georgia can send to another State in the Union for intoxicating liquor for his own use. But no one outside of Georgia can ship liquor into that State unless it is to a bona fide consignee. That is all that can be done to-day under present law, with the harmonious decisions of the Supreme Court for many years back.

Mr. DINWIDDIE. Will you tell me—

The CHAIRMAN. Now, I am trying to find out what you are seeking to prohibit.

Mr. DINWIDDIE. I accept that statement. Let me ask you this question, then: How can the State of Georgia, under the proposed case, deal with a shipment to a fictitious consignee like John Doe or Richard Roe, or X, Y, or Z, a package sent and a letter mailed at the same time, as Judge Smith said had been done, and as we know has been done in many instances, instructing the agent to deliver to anyone who comes and pays the charges, C. O. D., on that liquor?

The CHAIRMAN. The gentleman who made that statement certainly never read the Supreme Court reports. If you read the cases of *Vance v. Vandercook* and *Scott v. Donald* you will find that that point was there involved, and the Supreme Court held that the liquor dealer in Kentucky could not ship liquor into the State of Georgia in his own name. That is a much stronger case than yours.

In that case a California house shipped liquor into the State of South Carolina in violation of the law. It was two carloads. One was on an order. The other was shipped in on their own account. The people in the State of South Carolina, instead of doing as they are doing in the State of Iowa, seized those goods.

Mr. DINWIDDIE. They do it in Iowa and they end at the Federal court.

The CHAIRMAN. No, they did not.

Mr. DINWIDDIE. They do it in Iowa.

The CHAIRMAN. They asked for an injunction. The lower court granted the injunction as against both of the carloads. The Supreme Court of the United States reversed that injunctive order, and said that the State had an absolute right to seize the carload shipped in there in the name of the owners of the goods, because they said that was in violation of the law of the State of South Carolina, but they held that the carload that was shipped in on the order of the individual was protected by the law. Now, your question is answered in those three cases. The State of South Carolina, instead of sitting around and seeing the jugs in the depot, seized them, and the Supreme Court said they had a right to do it, and ordered a judgment in favor of the people. You look at those cases and see.

Mr. DINWIDDIE. You know that every case that is taken up in the State supreme court is taken up under its own individual circumstances. There was a discrimination in *Vance v. Vandercook*, a thorough discrimination claimed and shown, and the court referred to it and made it a part of its decision, I think, that the State of South Carolina was discriminating.

The CHAIRMAN. The earlier cases did come up on the question of discrimination, but there was no discrimination in this case.

Mr. DINWIDDIE. We have found, and good lawyers have said, that it is an impossibility. We will handle the State courts all right. We will do it in Ohio, and if we do not, we have no right to come to Congress along that line. If it is because of poor local sentiment, or because of a poor judge not interpreting things properly, we have no right to ask Congress to help us. But we do want it fixed so that under the operation of the law, as in the case of *Rhodes v. Iowa*, they can not do that which they are now doing.

The CHAIRMAN. You asked a question and I have tried to answer it.

Now, as I told you, and as I tell you again, there are two questions involved. The very thing you are now asking, the Supreme Court of the United States has said could not be done. The other thing that you are claiming is being done, the Supreme Court, said can not be done. In other words, they said the men handling those jugs are liable to be punished if the State law is enforced.

Mr. DINWIDDIE. We are only asking for this law because we have tried those things and failed because of the interstate-commerce clause of the Constitution. I did not intend to say this much, because I thought that even the legal side of the question from our standpoint as proponents of the bill had been very well handled by Judge Smith, Mr. Wilson, and others. I have only tried to do what I could in handling certain facts of the case.

**STATEMENT OF HON. WILLIAM S. McNARY, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MASSACHUSETTS.**

I will not take up much time of the committee, because it appears to me that this matter has been adequately presented to you. I only want to say that I think public sentiment in our State and thereabouts is distinctly against any legislation of this character. Without attempting to go into the local aspects of the case, it does seem to me that these gentlemen are trying under an act of Congress to enforce local regulations which they are unable and unwilling to enforce themselves. As to their inability and unwillingness, I am not prepared to go into it, but it seems to me that they could prohibit the local sale of liquor in these States if there is sentiment sufficient to do it.

It does not appear to me to be the business of Congress to supplement the action of the State. They ought to make the reform within their own borders and not come to Congress and ask us to enact legislation on this matter which can be just as well applied to articles of a very different character, to any articles, in fact, as well as to liquor; to tobacco, for instance. If it appeared to the people of any State that the use of tobacco or cigars is injurious to the morals of the people of the community—and many people think it is—and they choose to discriminate against that and then choose to come to Congress and ask us to prohibit the sale of it, that action would be just as reasonable and just as worthy of consideration as this. It appears that the attempt to prohibit the sale of liquor by prohibition laws is fruitless. The attempts to prohibit the manufacture or sale are attended with fair success, but the attempt to prohibit the selling of it is not.

We had an era of prohibition in Massachusetts which was entirely unsuccessful, and the State abandoned it and took up an era of high license, under which there is traffic, to the manifest interest of the community and of the manufacturers and dealers as well. We have had Maine, New Hampshire, and Vermont under prohibition laws, under which all the time liquor was consumed as freely as in New Jersey. At any time you could get liquor, and in some of these cities breweries were running under a full head of steam just the same as though there had been no prohibition laws at all.

Mr. DINWIDDIE. Only one?

Mr. McNARY. Only one. Well, they tell me that in the gentleman's own city there is a brewery running full head all the time, and

the only thing the authorities do is to take the matter up every once in a while and impose a little fine on it.

Now, it is useless for this gentleman to come and ask Congress, because it can not be done by their State laws, to prohibit by law the use and consumption of liquor, and it is also useless for him to ask us to prohibit the sale of liquor by the people of his own State, because if the people of the State can not do that it can not be done. We, in my district, and the people of the whole city, are certainly opposed to this whole business. And such a regulation as this bill, even if the decisions of the Supreme Court were not against it, is clearly against public policy, because the decisions of the court are not to be lightly set aside, and particularly should it not be passed merely because of the inability of the people of Iowa, or any other State, to enforce their own laws.

ADDITIONAL STATEMENT OF MR. W. M. HOUGH.

I would just like to say a few words further. I believe there is not to-day in any State of the Union complete prohibition. That is a fact, is it not?

Mr. DINWIDDIE. There are three States—Maine, North Dakota, and Kansas—which have absolute prohibition.

Mr. HOUGH. Without the right to sell? Do they not sell anything in those States?

Mr. DINWIDDIE. Not except for pharmaceutical purposes.

Mr. McNARY. They sell as freely in Maine as they do anywhere.

Mr. DINWIDDIE. Mr. Littlefield would tell you differently from that.

Mr. McNARY. I do not care what he would say; I have been there and I know what I am talking about. I have been in Portland and Bangor and other cities in Maine, and the saloons there are as free and as open as they are in the State of Massachusetts.

Mr. HOUGH. There is a place in each of these States where the citizen is entitled to have sent to him and to go and get a shipment of intoxicating liquors. If this law were to be passed it would have the effect of discriminating in favor of another State against the State where the law would apply. Mr. Dinwiddie says that might be true in Ohio, but is not true in Iowa. I am not familiar with the law which he says is in force in Iowa, but if there is no law in force in Iowa prohibiting the right to drink, certainly the individual who lives in De Moines, Iowa, or in Ottumwa, can go to Sioux City or any one of many places and get his jug and take it back home, and if any law should be passed that would undertake to interfere with that right I apprehend that there is no doubt in the world that that would be held unconstitutional.

If he has the right to do that he has the right to send to that place, or to send his agent, for he who does a thing through another does it himself. Thus with respect to any State in the Union, where there is any point in the State where you can obtain liquor, whether you go yourself or whether you send; whether you send a man or send a letter, the effect of this would be to discriminate against the citizens of every other State.

The effect of this bill, if it means anything, is to say that a State may interfere with an interstate shipment prior to delivery to the consignee. If a State should see fit to interfere with a shipment prior

to delivery to the consignee, how is the constitutional right of the individual to receive for his own use to be guaranteed by the Constitution? Delivery to the consignee is absolutely necessary; aside from all other considerations or all other questions which would indicate this bill to be bad, delivery to the consignee is absolutely necessary to conserve that right. Now, I understand that Mr. Dinwiddie says it is not the purpose of this bill to interfere with that right; am I correct?

Mr. DINWIDDIE. The purpose of this bill is to give the opportunity to each State, under the proper exercise of its police powers, to enact and enforce, unhampered from without, its own legislation concerning this question.

Mr. HOUGH. Let us not indulge in platitudes or general terms. I ask for a yes or no answer.

Mr. DINWIDDIE. I do not know that I would be compelled to give that.

Mr. HOUGH. No; nor you need not.

Mr. DINWIDDIE. I said here, that after careful interrogatories sent out to many of the States to ascertain just what their legislation was on that subject, I received absolutely certain answers from upward of thirty States, to the effect that there was no attempt on the part of any of those States to abridge the right to import liquor for personal use.

Mr. HOUGH. That does not answer the question; I will ask it again.

Mr. DINWIDDIE. I will answer it in this way, then. So far as I know there is no disposition on the part of any State to do it; but if I understand your contention, and if we have to admit, after reading *Vance v. Vandercook*, that if a State attempted to do that, it could not do it, if a right to import liquor was a right guaranteed by the Constitution of the United States, such State legislation would fall. So that it does not make any difference whether there is any such attempt; under the decisions of the Supreme Court, as you interpret them, a State can not do it.

Mr. HOUGH. That is not an answer. It makes no difference what the intention of the State is. I ask you if it is the purpose of yourself and others who are advocating this measure to interfere with the shipment to an individual for private use?

Mr. DINWIDDIE. I have practically answered that. I can not tell what is in the minds of all the advocates of this bill.

Mr. HOUGH. Limit it, then, to yourself. Is it your purpose or desire, so far as this bill is concerned—not State legislation—to interfere with the shipment to an individual in a State for private use?

Mr. DINWIDDIE. This bill is not legislation in the sense—

Mr. HOUGH. I presume that I can not get an answer.

Mr. DINWIDDIE. This bill is designed to take down the bars so that the State legislation will be effective.

Mr. HOUGH. Now, I have objected to platitudes a while ago, or general terms. I will assume, for the purposes of the next question, that you are not in favor of interfering with the right of the individual to have shipped and to receive for his own use. If you pass a law which will give the State the right to interfere with the shipment before delivery, does it not interfere with the right of the individual to receive for his own use?

Mr. DINWIDDIE. I should not think so, because you say that under the Constitution a man has a right to import for his own use.

Mr. HOUGH. I am talking about your purpose. The question is,

Would it not have that effect, of preventing that individual from receiving for his own use, if it could be enforced?

Mr. DINWIDDIE. I think not.

Mr. HOUGH. In so far as the individual is concerned, according to your conception, the individual could receive for his own use even if the State stopped the shipment before it reached him?

Mr. DINWIDDIE. The State does not stop the shipment before it reaches him if it is shipped for his own use.

Mr. HOUGH. I will eliminate the question of purpose.

Mr. DINWIDDIE. Very well; if you want to doctor it up.

Mr. HOUGH. How can an individual who is entitled to receive for his own use receive it, in order to determine what he is going to do with it, if it is stopped before it gets to him?

Mr. DINWIDDIE. My answer is that I know of no State which stops it before it gets to him.

Mr. HOUGH. That answer begs the question.

Mr. DINWIDDIE. No, sir; Judge Smith said that if it is apparent that it is for private consumption the State does not touch it. We passed a law in Ohio to tax saloons. We have also municipal local option and township local option in Ohio. Under the provisions of our law we always insert a proviso to the effect that the provisions of this law do not apply to liquors for personal or family use, except where a man's private residence becomes a place for public resort.

Mr. HOUGH. None of the cases cited by Mr. Dinwiddie or anybody else create conditions which could not be operated upon by State laws if the State laws were enforced. The cases he cited of shipments to X, Y, and Z, and the transfers of the bills of lading at the place of delivery were according to all the authorities sales at those places, and they could be prohibited.

Merely because there is a failure of the laws in some respect to be enforced, is no reason why Congress should come in and legislate. A proper law should and could be enforced.

ADDITIONAL STATEMENT OF CAPT. JACOB L. BIELER, OF INDIANAPOLIS.

GENTLEMEN: In conclusion I will say that I did not intend to take up more of your valuable time than I could reasonably ask as a citizen, but since hearing the argument of my friends on the opposite side, I would like to repudiate the insinuation made regarding anarchists and socialists; I think it reflects on the loyal citizens which I have the honor to represent.

I stand before you as a citizen of this great Republic by choice, but I challenge anybody to be a better American than I.

When Americans were needed, I was there to defend, as my Hoosier friend and poet, James Whitcomb Riley, would say, "Old Glory," the symbol of liberty. I also fought to free the blacks, but how does time change? Here I stand before you after a period of forty years and plead with you not to make the whites slaves, and they will be when you take away the mental power to govern the bodily wants. If this bill passes, how long do you suppose it will be before these same gentlemen will come with another bill to prohibit the use of tobacco, and as I have witnessed, some of you gentlemen of the committee enjoy a good cigar as well as I do?

Now, I am charitably inclined. I believe in the golden rule, "Do to others as you would have done unto you." I do believe, however, that the gentlemen in opposition are sincere in advocating the passage of this bill, but if you will pardon me I will say that they forget if this bill should become a law that they will invite into their respective States the most deadly enemies of mankind the world knows, and that is cocaine and morphine, and I am informed by reliable sources that even now the sale of those deadly drugs is on the alarming increase in some of the prohibition States. Now I, for my part, should I need a stimulant, would prefer a glass of beer or wine, and more particularly since you gentlemen passed the pure-food bill. I am also told that the State prisons and insane asylums in prohibition States are as crowded as in States where you enjoy freedom.

Statistics will bear me out in the statements made, and nobody should know better than our friends, Mr. Wilbur Crafts and Rev. Mr. Dinniddie, who are at the head of the so-called International Reform Bureau of Morals. These being the facts, why pass this bill? Is it only to satisfy their hobby? As long as barley and hops grow beer will be made, and if made, it will be used. As long as the grapevine produces that magnificent cluster the precious juice will be used in one form or another. As long as corn grows the bourbon will not only be used as a hair tonic, but also, as my friends on the opposite side would have it, for medicinal purposes only. Now, the theory of my prohibition friends sounds like a great many isms, for instance, socialism, which they talk so much about, even here in their arguments. Both isms may sound pleasant to some ears, but when you get down to dissect it it crumbles together like the Rock of Ages, there is nothing in it.

Both isms are not practical. The Prohibition party has, up to date, not made any statement how they would raise a revenue to maintain this great Government after bankrupting two-thirds of the business men of the country. The brewery and liquor business is an endless chain; it reaches from the shops in every line of business clear to the farmers. Now I will ask you how they will collect taxes from the men who had to sacrifice their worldly possessions? Besides, how many thousands and thousands of men will they throw out of employment, and how many women and children will be deprived of their former comforts? Now I ask them direct, will they allow their church property taxed to pay this enormous amount needed to carry on the Government? If so, who will pay the church taxes after half of the church members are ruined by their folly?

Now, if I am correctly informed, in a few months they will hold a convention in my home city, Indianapolis. Perhaps they will give us some light on this subject in their platform, and possibly they will show us how to reach the golden age, when all of us will become angels, and for that reason I would most respectfully recommend that you defer action on this bill until then. The eminent statesman, Thomas Jefferson, once proclaimed, "I would rather die than to be deprived of my liberty;" and there is where I, and those whom I have the honor to represent, stand to-day.

STATEMENT OF MR. ADOLPH TIMM, OF PHILADELPHIA, SECRETARY OF THE NATIONAL GERMAN-AMERICAN ALLIANCE.

Mr. Chairman and gentlemen of the committee, I beg leave to submit to you a few facts:

Since the National German-American Alliance has raised its voice against the passage of the Hepburn-Dolliver bills, we have received numerous congratulatory communications thanking us for the stand we have taken and wishing us success. These communications came from many different sources, not by any means from German-Americans alone. They reflect, I believe, Mr. Chairman, the true sentiment of the people of this great Republic, and show that an overwhelming majority—as has repeatedly been demonstrated in our national elections for prohibition candidates have always been ignominiously defeated—is adverse to prohibition.

The great majority of our people trusts that our national legislators will not abridge the individual liberty of citizens, and will allow free-born members of a free community to eat and drink what they like. What would members of Congress think of a bill to regulate our interstate commerce in such a way as to prohibit the transportation of a certain kind of clothing? It would be considered ridiculous, and in the same manner we claim the right to choose what we shall eat or drink and shall not willingly have this right curtailed by any interstate commerce measure any more than we are willing to be told what we shall wear. Indeed, in my eyes, Mr. Chairman, the Hepburn-Dolliver bills are as ridiculous as if they wished to prescribe the style in which one should wear one's whiskers.

The few friends of prohibition say that alcoholic drinks are a common danger and that the Federal Government has a right to regulate the interstate shipment of liquors. The Federal Government has done this long ago on the revenue plan, and it is the recipient of enormous sums of money from these sources. What more can our Federal Government be reasonably expected to do? Can it logically prohibit the shipment of an article to any part of the United States on which it has received revenue? Article II, section 8, paragraph 1, of the Constitution of the United States distinctly says that all duties, imposts, and excises shall be uniform throughout the United States, and, therefore, certainly also implies the right of shipment of articles on which revenue has been received by the Government.

Prohibitionists never would have thought of asking Congress to pass laws which would change our well-arranged interstate regulations to fit the purposes of a few fanatics if prohibition had not been a failure in many States. They thought to win State after State and then to make national prohibition an easy task which has failed; instead of winning more they have almost lost the little they had. This well-deserved defeat made them change their tactics.

Prohibition is an experiment that has proved to be unsuccessful everywhere. This fact alone should caution our national legislators to be careful and keep it out of national legislation in whatever disguise it may appear. Prohibition as a problem-solving method is out of existence, because in prohibition States prohibition never exists. I heard a lady say at the last hearing, January 20, that standing at a railroad station in Virginia she saw cars being loaded with jars which

contained whisky. The point of destination of these cars was a prohibition State. This statement in itself admits that prohibition is a failure.

Prohibition in politics, Mr. Chairman, is a real danger to our nation. Its failure as a legislative measure has reduced it to a mere term, to which a few people cling who, by force of surroundings, have been driven into fanaticism, or who have overindulged at some period of their lives, and distrust their own weakness. These are the honest ones—more dispicable are those who make it a profession to preach what they themselves do not live up to. It would lead too far to relate instances. In my opinion, the very few true believers of prohibition would find better and more becoming work in the educational field.

Among the many communications the National German-American Alliance received were several from clergymen who do not need to fill their churches with the cry for prohibition. Learned preachers have discussed the liquor problem from the pulpit and have come to the conclusion that a well-regulated liquor traffic is a greater aid to true temperance than prohibitory laws. This is a remarkable sign, for it signifies that the best church element of the United States is by no means in favor of prohibition. It is a pleasure to hear or read the sermons of ministers who do not regard the church as a tool of prohibition. Praised be these men, who so fearlessly express their views on the liquor problem. They are real teachers, advisers, and educators to their congregations. They are the standard bearers of true religion, the guardians against its drowning in sensationalism.

Why is prohibition the real common danger? Because it pretends to be a remedy, while it is an evil in itself. If legislators intend to regulate the liquor traffic with prohibitory measures they may as well declare a state of lawlessness, because prohibition creates lawlessness. Prohibition and its offspring, local option, are a danger to juries and to justice. Here is one example of thousands: Judge James D. Watters, of Belair, Md., according to the Baltimore Evening News, of October 9, 1903, blamed local option for lax juries, who will not convict liquor-law violators and thus become careless in all cases. The Judge said:

I have nothing to say against the individual members of the jury, but it was a case of gross miscarriage of justice. The system of drawing juries provided by the law is as good as any I can think of, and the trouble with the juries in our county does not lie there. It is an outgrowth of the local-option law which we have had here for 20 years.

As a matter of fact, the local-option law can not be enforced. The sentiment in the county is against it, and the people simply will not convict a man who sells liquor. We have tried it again and again, and always with the same result. Last spring the Law Enforcement League made a great effort, and they secured a number of indictments, one against this very woman, Sevilla Neiman, but only succeeded in sending one lame negro to the house of correction for six months. And it has always been the same.

Now, when jurymen get in the habit of overthrowing the law in one class of cases they soon learn to do it in another. When they acquit men for violating the local-option law without any protest from the public, they imagine they can acquit them on other charges. They are the judges both of the evidence and the law, and they take that to mean that they can make the law suit their own ideas. The only remedy that I see is to get a high-license law, and then enforce it.

This brings to light a very peculiar state of affairs. There are a number of "speak-easies" in this town—ambrosia shops, they are called—and, in addition, almost every full-grown negro in the town is a walking liquor shop. They all sell it. And everyone of them is in favor of the local-option law, and would vote to continue it if the question was resubmitted. You see, if we got a high-license law, their occupa-

tion would be gone. Thus we have the strange spectacle of the extreme temperance folk—the prohibition people—lined up side by side with the lawbreakers in favor of local option.

This statement of Judge Watters characterizes prohibitory legislative measures. And what effect would the Hepburn bill have if passed and enacted? Would it not deprive citizens of prohibition States of privileges which Article IV, section 2, paragraph 1, of the Constitution of the United States guarantees to all citizens? The Constitution of the United States distinctly says: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Would it not be class legislation to take from citizens of certain States privileges which citizens in other States enjoy? And the effect of the Hepburn bill would even go further. Law-obeying citizens in prohibition States who now order wet goods according to law in original packages would be enticed to violate the law and get their drinks under another name. The most sanguine prohibitionist will not dare to say that this would be a benefit to good citizenship.

Our great Republic represents the most advanced stage of civilization of all ages, because its founders have laid down the principles of liberty in its Constitution. These principles must be guarded if the United States are to remain a Republic, composed of free and sovereign people, not a dormant mass governed by a few fanatics and hypocrites. I can not cite better words than those of the immortal George Washington, who foresaw the dangers that would arise to the institutions of liberty. In his farewell address, after thanking the people of the United States for the honors conferred upon him, he said:

Profoundly penetrated with this idea, I shall carry it with me to my grave, as a strong incitement to unceasing vows, that heaven may continue to you the choicest tokens of its beneficence; that your Union and brotherly affection may be perpetual; that the free Constitution, which is the work of your hands, may be sacredly maintained; that its administration in every department may be stamped with wisdom and virtue; that, in fine, the happiness of the people of these States, under the auspices of liberty, may be made complete by so careful a preservation and so prudent a use of this blessing as will acquire to them the glory of recommending it to the applause, the affection, and the adoption of every nation which is yet a stranger to it.

STATEMENT OF DR. WILBUR F. CRAFTS, SUPERINTENDENT OF THE INTERNATIONAL REFORM BUREAU, IN BEHALF OF THE BUREAU AND HIMSELF.

Mr. Harrison, the paid lobbyist of the United States Brewers' Association, instead of arguing the merits of this bill, attempted to show that the extraordinary public interest in this legislation had been worked up by falsehoods and illegal methods, the exposure of which he repeatedly promised would "startle and shock" this committee. With the legislative report of the Antisaloon League he submitted half a dozen of the publications of the Reform Bureau as the labeled "exhibits" by which he would prove his charges. As the committee well knows, he has failed to "make good."

His labored efforts to prove that in a document sent out by the bureau statements quoted from Mr. Joshua L. Baily and Mrs. Ella M. Thacher, who had visited nearly all the Homes, with reference to the Government beer halls, were falsehoods, did not even prove there were errors, such as creep into the most careful work of fallible men.

I had thought that in the quoted statement of Mrs. Thacher that the canteen inside the Soldiers' Home at Hampton did not prevent the opening of 97 drinking places outside—this was several years ago, since which conditions have improved—might be a misprint for 47, but two of the most reliable citizens in that town confirm the accuracy of the higher figure. And so the claim that "shocking" falsehoods were the means used to bring support to the bill falls flat.

The claim that the people are not really in favor of this measure, but are asking for it only because our bureau and other organizations ask public support, is too trivial for serious consideration. We but inform the people what the bill is and what it would do, and so serve as a medium of expressing public sentiment, which already exists wherever in any State efforts have been made to enforce no license. The reason for the imperfect enforcement of prohibitory laws, so often alleged on the other side, is that citizens who are able and willing to restrain local liquor dealers have become weary of fighting the whole power of the National Government, which has reenforced the saloons by its "inter-state commerce" powers.

When the nation calls off these dogs and restores local self-government on the liquor question, the spreading area of no license will increase yet more rapidly. We do not seek to prevent the importation of liquors for private consumption, and no one has met my challenge at the opening of these hearings to cite any case where such imports have anywhere been interfered with, but we do ask that Congress will refuse to allow its inter-state commerce powers to be longer used to enable outsiders to nullify State liquor laws by selling liquors to speakeasies.

I wish now to introduce for the concluding argument of this hearing Rev. O. R. Miller, field secretary of the International Reform Bureau, who was chosen to this office because he had bravely enforced the liquor laws of Massachusetts against its liquor dealers. He has traveled widely, and has observed in many States the tricks that call for this law.

ARGUMENT OF REV. O. R. MILLER, FIELD SECRETARY OF THE INTERNATIONAL REFORM BUREAU, WITH HEADQUARTERS IN WASHINGTON, D. C.

Mr. MILLER. Mr. Chairman and gentlemen the committee, I speak as the representative of the International Reform Bureau, of which the Rev. Dr. Wilbur F. Crafts is superintendent and treasurer and of which I am field secretary.

I am not here to discuss the legal side of this question, but to give some facts which may throw light upon the evils which this bill proposes to remove. Bishop Fowler says, "If you flood a rat hole with light you spoil it for rat purposes." And so I believe that if a flood of light can be thrown upon the evil conditions in many States produced or made possible by the weakness of our present inter-state commerce law in reference to the liquor traffic, your committee will recommend the passage of this Hepburn bill, which will spoil the present inter-state commerce laws for illegal rumsellers' purposes.

There are many reasons why the Reform Bureau, in cooperation with others, appeals to you to recommend the passage of this Hepburn-Dolliver inter-state liquor bill to prevent the practical nullification of

the will of a majority of the people in no-license and prohibition territory, through interstate commerce tricks.

WIDE OBSERVATIONS OF THE SPEAKER.

As field secretary of the Reform Bureau I have occasion to go up and down over the country, speaking in many different States; hence I have been able to observe the conditions which make this bill necessary. Allow me to give you, therefore, a few facts from various States which I have visited the past year, which will help to show you why we urge the passage of this measure.

My observations have reached this past year from Eastport, Me., to Burlington, Iowa, and I have found a very general interest in this bill. People in many States have asked me, "What is the prospect for the passage of the Hepburn liquor bill?" and I have always said that we have every reason to believe that the present Congress would pass this bill because all the great reform organizations of the country—the Anti-Saloon League, the Reform Bureau, the W. C. T. U., and the National Temperance Society—are a unit in urging its passage. Each of these societies has done much to arouse a great popular interest in this bill.

Last summer I made a tour through the State of West Virginia, speaking every night for a month in all parts of the State, especially in the interest of this Hepburn bill; and I have done the same in several other States, and Dr. Crafts, superintendent of the reform bureau, in his addresses all over the country this past year, has also spoken in behalf of this bill.

When on my trip through West Virginia last summer I found that the temperance people of that State everywhere were sorely grieved at the failure of the last Congress to pass this bill. In anticipation that the last Congress would pass this bill the temperance people of West Virginia, led by the Anti-Saloon League of that State, pressed for and secured the passage of a strong anti C. O. D. liquor law to forbid any person, firm, or corporation of that State shipping liquor C. O. D. to any illegal liquor dealer in any no-license territory in that State. It is a model law.

WEST VIRGINIA ANTI C. O. D. LIQUOR LAW.

The following is a copy of the splendid West Virginia anti C. O. D. liquor law, a similar law to which ought to be passed by every State in the Union. The Hepburn interstate liquor law will be of value only to those States which back it up by some such State legislation:

A BILL regulating the shipment and sale of intoxicating liquors contrary to law, and providing a remedy therefor.

SEC. 1. That any agent or employee of any person, firm, or corporation carrying on the business of a common carrier, or any other person, who, without a State license for dealing in intoxicating liquors, shall engage in the traffic or sale of such liquors, or be interested for profit in the sale thereof, or act as the agent or employee of the consignor or consignee of the same, or who shall solicit or receive any orders for the sale of any intoxicating liquors or deliver to any person, firm, or corporation any package containing such intoxicating liquors, shipped "Collect on delivery," or otherwise, except to a person having a State license to sell the same, or to the bona fide consignee thereof, who has in good faith ordered the same for his personal use, shall be deemed to have made a sale thereof contrary to law, and guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten nor more than

one hundred dollars, and may, at the discretion of the court, be imprisoned in a county jail not exceeding six months.

SEC. 11. If any person shall make affidavit before any justice of the peace that he has cause to believe and does believe any spirituous liquors, wine, porter, ale, beer, or drink of like nature are being held, sold, or delivered in violation of the provisions of this act, such justice shall issue his warrant as provided in section 23 of chapter 32 of the code, and like proceedings shall thereupon be had as provided therein.

You see this law is very liberal. It affects only illegal liquor dealers. It specifically provides that liquor may be shipped into any no-license town or county of that State to a private individual "who has in good faith ordered the same for his personal use;" but if the same individual in a no-license town or county of that State was receiving one hundred or more jugs of whisky every week by express or freight, then any honest court would doubtless hold that the railroad or express company delivering it and the person receiving it were evidently violating the law, and would impose penalty accordingly.

If a town or county votes out the liquor traffic, the State should assume that the people of that town or county want what they voted for, and hence should protect the will of the majority of the people by providing that so far as the State is concerned the traffic in that town or county shall cease, and so the State should provide that when any subdivision of its territory votes out the saloons no railroad or express company or individual should be allowed to send liquor to anyone in that no-license territory which was evidently intended for sale.

WEAKNESS OF THE PRESENT INTERSTATE COMMERCE LAW.

But now, under protection of the interstate commerce law, liquor dealers outside of West Virginia can do what liquor dealers in the State can not do. The liquor dealers and the common carriers in the State are forbidden to ship liquor to illegal dealers in no-license towns and counties of that State, but outside liquor dealers and common carriers can ship liquor in the original packages into any part of the State, whether license or no license, for, according to the interpretation of our present interstate commerce law by the United States Supreme Court, liquor dealers in one State can ship liquor in the original packages into another State, and such liquor does not become subject to the law of the State into which it is shipped until after it is delivered to the consignee; which simply means that it can not be seized or molested by the local officers until after it is delivered by the express or railroad company to the one to whom it is consigned; and this helps to nullify the prohibitory and no-license laws of many States.

A bill to remedy this evil was first brought from Iowa by Mr. Silas Wilson, and was introduced in the House by Congressman Hepburn, of Iowa, and passed that branch of Congress on January 27, 1903, but it proved too late in the session to get it through the Senate. This was a bill in the right direction, but although the Reform Bureau worked hard for its passage, still it had some serious defects which might have jeopardized its constitutionality. But it has now been improved by the Anti-Saloon League and the Reform Bureau in the present Hepburn-Dolliver bill. The Reform Bureau has been trying to arouse a great popular interest in this important measure, urging the friends of this

bill everywhere to appeal to their Senators and Congressmen at once in its behalf.

Referring again to the West Virginia anti C. O. D. liquor law, let me say that it was this unfair discrimination against liquor dealers of their own State which caused prominent men of West Virginia to say to me when on my trip through that State last summer that had they not been assured that the Hepburn bill would pass in the last Congress, the last West Virginia legislature would not have passed their present anti C. O. D. liquor law. It is therefore the very evident duty of the National Congress to back up the action of the State legislatures in all such matters. Already nearly two-thirds of West Virginia is under no license, and under the present interstate commerce law in many places in that State the shipping in of liquor in original packages from outside of the State has practically nullified the expressed will at the ballot box of the majority of the people in such no-license territory.

ORIGINAL PACKAGE NUISANCE IN NEBRASKA.

When on a long tour through the West last year I met a minister from Nebraska who told me that several years ago the people had voted out and driven out the saloons from every town in his county. But the outside rumsellers, under protection of the interstate commerce law, began to ship in liquor in the original packages to illegal liquor dealers in such large quantities that finally the temperance people, realizing their helplessness, became discouraged and disgusted, and so voted back the saloons all over the county, simply because the United States Government, instead of siding with the great majority of the people of that county against the lawbreakers, practically sided with the local illegal liquor dealers and outlaws against the expressed will of the majority of the people. It is the duty of the National Government to back up rather than to break down State laws.

EXPRESS OFFICE BECOMES THE TOWN RUM SHOP.

In many no-license places in many States, under the present interstate commerce laws, the local express company's agent becomes the illegal liquor dealer of the town. When liquor is sold by the express agent it is usually done as follows: The soliciting agent of the wholesale liquor firm goes to the express agent and gets the names of all the old bums in town and consigns to each of them C. O. D. one or more bottles of liquor in the "original package." The bum knows that there is always a package of liquor at the express office for him which he can get at any time he wants it, and often liquor is consigned to fictitious names, and such liquor can be taken out by anyone who will pay the C. O. D. charges and sign the fictitious name to whom it is sent. The agent of the wholesale liquor firm arranges this with the express agent, who gets a certain per cent of all liquor thus delivered. This past year I have found these conditions in several States.

SOLICITING SALES FROM HOUSE TO HOUSE.

Sometimes the arrangement between the wholesaler and express agent is made by mail. Another method employed for violating the

law is this: A wholesale liquor dealer in one State will ship to one of his agents in some prohibition territory in another State a large number of original packages of liquor—bottles of beer, cases of wine, and demijohns of whisky—and send a different bill of lading for each to his agent. Then the agent will canvass the town, explain the superior quality of the different kinds of liquor consigned to him, and then sell the bills of lading to whoever desires the whisky, saying to them that he does not dare to take this liquor from the freight office and deliver to them lest he be arrested for selling liquor, but that they can take the bill of lading and get the package which the bill of lading calls for, and no officer would attempt to seize the liquor when in their possession, knowing that they wanted it for their own use. By this method business is drummed up and people are encouraged to buy who would not otherwise have gone to the trouble to order liquor, and the will of the majority of the people is broken down.

RUM SELLING EXPRESS AGENT AT WASHINGTON, PA.

Probably the worst case of this kind which I have found anywhere in my travels was at Washington, Pa.—a no-license town of about 25,000 population—where one of the local express companies has great quantities of liquor all the time in its office. There were boxes of liquor piled higher than a man's head, and there were shelves all around the office with hundreds of bottles, or "original packages," waiting for the consignee to get dry, or for the pocket peddler to call for it. The express company had a team to deliver other goods, but there did not seem to be any effort being made to find the owners or consignees of the great quantity of liquor on hand and deliver the same. It seemed to be a mutual understanding with the express agent—the town rumseller—and his patrons that the liquor was not to be delivered, but "to be called for" as needed. One of the most prominent and wealthy men of that city complained bitterly of the scandalous work of that express agent, and asked if something could not be done to stop it. I went into that express office two or three times and examined conditions, and boldly charged the express agent with violating the law, but he insisted that he was living within the limits of the law. But if Congress will pass this Hepburn-Dolliver bill, and Pennsylvania will back it up with some good State law like the West Virginia anti C. O. D. law referred to, that express agent, and others like him in no-license towns in that State, will have to go out of the rum business or go to jail.

ORIGINAL PACKAGE NUISANCE IN MAINE.

When on a lecture tour "way down East," in the State of Maine, last fall, I saw there the great need for the passage of this bill. As I have said, the present interstate liquor law protects liquor "in transit," or until it is delivered to the consignee. When at Portland, Me., they told me of the difficulties met with by the late Sheriff Samuel F. Pearson in his noble and heroic efforts to enforce the prohibitory law in Portland and Cumberland County. I was told that sometimes wholesale liquor dealers in Boston and other places outside of the State of Maine would ship a large quantity of liquor in the original packages to some illegal liquor dealer in Portland. The express company would

load up a wagon full of this liquor and start out to deliver it to the consignee, and two of Sheriff Pearson's deputies would follow the express team, determined to seize the liquor the moment it was delivered to the consignee, the illegal rumseller.

But as soon as the express company's driver saw that he was being followed by two deputies, he would whip up his horse and rush down one street, up another, across another, and through an alley, etc., trying to get away from the deputies. If he succeeded, he delivered his liquor to the low dive keeper, the consignee. But sometimes, after being followed by the deputies for several hours around town and found no opportunity to secretly deliver his goods, the driver would take his load of liquor back to the express office and unload it, and wait until 2 o'clock in the morning, or some other unseemly hour, when, perchance, the deputies were not watching, when, under cover of darkness, he would load up his liquor again and quietly steal away and deliver it to the consignee, the proprietor of the "low dive," the "speak easy," or the "blind tiger," or whatever other name you may call the illegal rum shop.

I say it is a grievous wrong, a burning shame, an unpardonable outrage, that the United States Government should make it so very difficult for a State to enforce her own laws. Now, if this Hepburn bill passes, for which we plead, it will greatly simplify the problem of prohibition in Maine. The main point of this Hepburn bill is that liquor shipped from one State to another shall become subject to local authority as soon as it passes the State line, which would mean that the sheriff of Cumberland County, Me., or his deputies, would not have to wait until a load of liquor was delivered to the consignee, but liquor evidently intended for sale could be seized in the freight car or freight office, or in the express office, or on the express wagon on the street, and confiscated.

SEIZING LIQUOR IN TRANSIT.

When I was at Skowhegan, Me., last fall, I called on Sheriff Lang, the Democratic sheriff of Somerset County, who is enforcing prohibition so grandly in that county. He said to me: "Mr. Miller, I hope that the reform bureau will press the Hepburn interstate liquor bill before Congress with all possible haste. We greatly need it in the enforcement of the prohibitory law of this State, as under the present laws we are not allowed to seize liquor 'in transit.' I have a lawsuit on my hands now for seizing in transit a big consignment of liquor evidently intended for sale. I ought not to have seized it till after it was delivered to the consignee; but then it is usually so much harder to find and seize liquor after it gets into the hands of the consignee; that is, the the illegal liquor dealer. I hope your bureau will rush the Hepburn bill." I received the same earnest appeal in substance from prohibition sheriffs and temperance workers all over the State when on my tour there last fall. Rev. Herbert N. Pringle, secretary of the Maine Civic League, said to me that this bill was so important to the State of Maine that he would like to come to Washington and speak at the hearing if it were possible for him to get away at the time.

PROHIBITION IN MAINE.

On my trip down through Maine last October and November I spoke in about thirty of the largest cities and towns of that State on "How

high license and local option work in Massachusetts." As Massachusetts has the best high license—local option—law of any State in the Union, and as I have lived in that State nearly fifteen years, and have been active in trying to help enforce the high-license law of that State, I can speak from practical experience and wide personal observation with reference to it, rather than from theory or from hearsay. As our friends, the enemy, the brewers, the distillers, the wholesale liquor dealers, and their friends, have had much to say about the failure of prohibition in Maine and elsewhere, I would like to say just a few words about the failure of high license in Massachusetts as compared with prohibition in Maine.

When on my trip through Maine last fall I gave the people of that State a great mass of facts from my own observation and investigation in Massachusetts to prove six great facts concerning the workings of high license in Massachusetts, as follows:

(1) High license does not drive out the low dives. (2) High license is constantly and flagrantly violated. (3) High license is hard to enforce. (4) High license increases drunkenness. (5) High license increases taxes. (6) High license increases political corruption. This is only a bare outline of my address. My complete address has been printed by the Reform Bureau, and a copy of it will gladly be sent to anyone desiring it.

PRESENT ENFORCEMENT OF PROHIBITION IN MAINE.

I am glad to testify that prohibition in Maine to-day is being better and more generally enforced than at any previous time in the history of the State, and the people like it. The courts have begun to give jail sentences in addition to fines, and that has struck terror to the hearts of the rum brigade. Last November when I was in Maine, I found that there were at that time about 100 of Maine's illegal rum-sellers in jail, some of whom were serving sentences of eight months in prison in addition to heavy fines imposed. No wonder the illegal rum-sellers of Maine, and their friends outside of Maine, the brewers, the distillers, and the wholesale liquor dealers, are making such frantic efforts for resubmission in Maine, hoping to get prohibition repealed in that State. They had hoped that the present strict enforcement of the prohibitory law nearly all over the State would turn many people against it; but the great mass of the people seem delighted with the present conditions and want them to be continued. Many people of that State who supposed it impossible to strictly enforce the law, have been convinced this past year that it is easily possible to enforce the law when the courts and officers do their duty. And many people of that State, who a year or two ago favored substituting high license for prohibition, have given up that position, and are now standing firm for the old prohibitory law and for its strict enforcement. The old Pine Tree State still stands at the head of the prohibition column.

When the Hepburn interstate-liquor bill was before the Fifty-seventh Congress, in the House of Representatives, on January 27, 1903, Congressman W. I. Smith, of Iowa, made a strong speech in favor of it. We quote part of his speech:

SPEECH OF CONGRESSMAN SMITH.

Mr. Speaker: In the case of Leisey against Hardin the Supreme Court of the United States held that under the interstate-commerce clause of the Federal Constitution one had a right to ship liquor into a State in original packages and there sell it in

unbroken packages. Immediately after the decision was handed down Congress passed the Wilson bill, which provided that upon the arrival of liquors in a State they should be subject to the police regulations thereof. The United States Supreme Court, in the Rhodes case, held that "arrival" meant delivery to the consignee. Under this holding a practice has grown up in Iowa by which a nonresident ships a large number of jugs into the State, addressed to himself, and then his soliciting agent goes about selling these liquors at retail in the town, and simply transfers the bills of lading, thus carrying on the retail liquor business in that dry town in violation of the will of the majority of the people, and using the express office as a retail liquor place.

So flagrant has this become in Iowa that in one of the towns in Colonel Hepburn's own county, when I had the honor of presiding upon the bench in that district, as high as 100 jugs at a time were found in a single express office, addressed by the consignor to himself as consignee, without any intention that they should ever be delivered, except to the several assignees of the bills of lading that might be found after the arrival of the goods in the State.

Under the decision in the Rhodes case these liquors were not subject to seizure and could be kept there in large quantities in the office of the express company, and retailed from there to whoever would pay the C. O. D. charges, the value of the liquor, and the cost of transportation.

There are people even in Iowa who demand intoxicating liquors. But we say that the majority of the people in a community have the right to say whether this traffic shall be conducted there or not.

Now, if we do not want this traffic carried on, we ought to have the right to prevent a nonresident Iowan sending liquor to himself in a dry town, insisting that under the decision in the Rhodes case they are entitled to immunity from seizure until they are delivered to the consignee, when he does not intend to receive them, and retailing these liquors to whoever will come up and advance the value of the liquor and the cost of transportation.

This bill will not prevent any local citizen ordering liquor for his own use from another State by express, but it will prevent express agents turning their office into a rum shop and thus breaking down the will of the people where they have driven the saloons out.

ORIGINAL-PACKAGE NUISANCE IN KANSAS.

As further evidence as to the way liquor men are breaking down the will of the people in prohibition territory, I submit herewith a clipping from a Kansas paper of recent date, which speaks for itself:

EXPRESS-OFFICE SALOONS—UNCLE SAM THINKS HE HAS BEEN DEFRAUDED OF HIS TAX.

Under a Kansas City date line of February 4, 1904, it is said that the Government at Washington has begun a war upon whisky dealers in Kansas City who have been shipping liquor to Kansas in an irregular way. Two Kansas City dealers have already been indicted and arrested. It is said that twenty or thirty dealers will be indicted.

The internal-revenue laws of the United States provide that—

"Any person who shall carry on the business of retail liquor dealer without having paid the special tax as required by law shall, for every such offense, be fined not less than \$100 nor more than \$5,000, and shall be imprisoned not less than thirty days nor more than two years."

The Government officials contend that this law has been violated in this manner:

The express agent in a Kansas town would be the selling agent of the Kansas City dealer. He would receive from the dealer, say, a dozen cases of whisky, each containing 4 quarts, the case valued at \$3.50. Each case would be addressed to some fictitious name. It would not be shipped in the express agent's name, because he would then be an out-and-out whisky dealer. He has always in his express office a half dozen or more cases. When anyone in the town wished to buy whisky he would go to the express agent, who would say:

"Well, there's a case here addressed to So-and-so. He has not called for it, so if you pay the express charges of \$3.50 I'll let you have it."

The agent would keep 50 cents for his commission and remit \$3 to the dealer, who, upon receipt of it, would ship another case under the same name to the agent. Thus the express agent was really the agent of the dealer, and the more he sold the more he made.

This method of whisky selling was so successful that whisky firms which followed it sprang up like mushrooms in a night, and there are 20 or 30 of them here. One

which had been in existence a year shipped an average of 400 cases a day by one express company, and there are five different express agents in Kansas. This method of whisky selling was known as "shipping on suspicion."

The business grew to such proportions that in Kansas nearly every express office was the town saloon.

The Government at last took hold of the matter, because this method was losing the Government thousands of dollars in taxes annually. The special tax for every place where whisky is sold in quantity less than 5 gallons is \$25 a year, and if each of these express agents had paid that tax it would have doubled the Government's revenue from this source in Kansas; therefore John W. Yerkes, Commissioner of Internal Revenue, directed that the war upon this species of business begin, and many extra revenue inspectors were sent into Kansas and local-option counties in Texas to gather evidence.

The Supreme Court of the United States has already passed upon this sort of illegal whisky selling. Years ago two whisky dealers in Kansas City (Shriver and Cline) were arrested for this offense. In their cases the United States Supreme Court held that where a Kansas City house shipped pursuant to a bona fide written order, then the sale was made in Kansas City, and the dealer's special license authorized him to make the sale. But with no written order, then the sale was made at the place of delivery. The court held that the fact that an express agent sent a list of names, or directed the shipment, that was not a bona fide order.

The Supreme Court also held in these cases that if a corporation violates this law all its managing officers are liable.

The Kansas City liquor dealers were indicted by a Federal grand jury, sitting at Wichita a few days ago. The indictments were sent to the office of the United States district attorney in this city by J. S. Dear, United States attorney for the district of Kansas. The arrest of the two men followed.

It is the understanding of the district attorney that the two indicted will be tried at the adjourned term of the Federal court in Kansas City, Kans. The adjournment term begins February 15.—*Kansas Prohibitionist*.

The enemies of all no-license and prohibitory laws at this hearing have made frequent references to the injurious effects to a town of no-license or prohibition. I give herewith an article by W. P. Ferguson, a staff correspondent of *The New Voice*, of Chicago, in 1899, who visited at that time Delhi and Walton, N. Y., one a license, the other a prohibition town. The results are quite remarkable, but no more remarkable than could be shown by many other instances in other parts of the country. This ought to be a sufficient reply to the charge made by the brewers and their friends that prohibition always injures a town.

A STUDY IN LOCAL PROHIBITION—RESULTS OF LICENSE AND NO-LICENSE POLICIES IN TWO NEW YORK STATE VILLAGES.

DELHI, N. Y., January 7, 1899.—I have been spending the day in this village, which is one of the most interesting and beautiful in the State, and have been studying a contrast that is presented between this and the neighboring village, Walton, something less than 20 miles down the Delaware River. Some twenty-five or thirty years ago the village of Walton adopted no-license, which policy has been generally followed by the village and the township ever since, the law being better enforced year by year, and especially well during the last ten years. Shortly after the adoption of no-license in Walton, Delhi, in 1874, adopted no-license, but after a year or two abandoned the policy, and has nearly always voted license since. At the time of the adoption of no-license by Walton it was confidently predicted that it would prove the ruin of the village, and many business men of Delhi supported license on the ground that the business interests of the village demanded it.

In Walton there have been one or two short periods of license, and in Delhi similar periods of no-license, while at times at Walton the enforcement of the law has been slack; but the two villages and the townships stand as examples of the comparative results of the two policies followed for a considerable term of years.

Before giving results in detail I ought to indicate the comparative advantages possessed by the two villages. Walton, situated on the main line of the Ontario and Western Railroad, has better railroad facilities than Delhi, which is situated on a branch road; but this is more than counterbalanced by the fact that Delhi is the base of supplies and the shipping center of five or six surrounding townships that consti-

tute one of the richest dairy regions in the whole country. Delhi, too, has had the advantage of being the home of a large number of wealthy and influential families, is the county seat, and consequently the place of residence of well-paid county officials, and the court center to which comes, almost monthly, a small army of attorneys, witnesses, and jurors, all of whom pay tribute to the business of the village. Delhi is also a summer resort of considerable popularity, and annually receives thousands of dollars from that source.

The difference in the type of population, so far as the two places differ, is in Delhi's favor, her inhabitants being very largely of sturdy Scotch descent.

The two villages have been rivals, and, so far as I can discover, Walton's one real advantage has been freedom from the legalized liquor traffic. The outcome of their rivalry is as follows:

POPULATION.

	1870.	1880.	1890.	1897.
Delhi (village).....	1,223	1,384	1,564	1,932
Walton (village).....	866	1,389	2,299	3,084

Gain in population of license village in 27 years, 57.9 per cent.
Gain in population of no-license village in 27 years, 266.1 per cent.

Outside the villages, the population of this whole section of the State is decreasing; but in the 20 years from the census of 1870 to that of 1890 the rural population of Walton township (not the village), which was under no license during nearly the whole period, decreased only 4.5 per cent, while in Delhi township, under license nearly all the time, the decrease was 20.7 per cent.

BUSINESS PROSPERITY.

Twenty years ago Walton was noted for its lack of business enterprise, and a good deal of the business that usually is considered local "went out of town," while Delhi was the center of a large trade. To-day, according to the reports of the commercial agencies, Delhi has business capital invested to the amount of about \$300,000, while Walton's investments in home business amount to about \$500,000.

According to a statement which I have upon the authority of a Delhi business man, and which I have verified as far as it is possible to do so in the absence of systematic records, the business failures of Delhi have, during a little over twenty years past, amounted to \$1,000,000 of unpaid liabilities, or more than three times the present invested capital. In Walton I was unable to learn of a single failure of any importance for ten years past, while I am assured, by those who have had the best of opportunity to know, that the total of unpaid liabilities of the failures in Walton for twenty years back would not exceed \$100,000.

Ten years ago Delhi still held its position as the money center of the county, and all large transactions were adjusted there. To-day it is conceded to rank below not only Walton, but two or three other villages of the county. It is a fact worthy of mention that of the 8 incorporated banks here in Delaware County, 6 are situated in no-license towns.

BUSINESS AND MORALS.

"Even though there have been years," said a Walton business man to me yesterday, "when the law has been very poorly enforced in Walton and a good deal of liquor has been sold, one benefit of no license has always existed—the business has been under the ban, and both selling and drinking have been looked down upon. As a result, our young men have grown up sober, and a drinking man among Walton's business men is hard to find. One of the results of this has been that we have no business crashes caused by gambling losses, and another is that there has been, so far as I recall, only one defalcation in the village during the past ten years."

The testimony regarding Delhi is in marked contrast. Not only selling, but drinking, has had the sanction of respectability here. A representative of one of the largest business interests in the United States, a man who has had opportunity to know Delhi both financially and socially, said a few days ago: "Conditions in business circles at Delhi are almost beyond belief. I know of no other town where drinking and gambling are so common among business men." Another gentleman, a life-long resident of the place, said to me sadly: "I have seen more than a score of young men in business in this village go to financial and moral ruin through drink

and its attending vices. Many of them have been of the best families and among our brightest and most promising boys."

Defalcations have been numerous, and some of them very grave. The only bank in the village is to-day in a receiver's hands, and the leading manufacturing industry is suspended, owing to irregular transactions that business and professional men here do not hesitate to assure me were the direct result of drunkenness and gambling on the part of officers of the bank and members of the manufacturing company.

PUBLIC HEALTH.

I was at first disinclined to believe that license or no license would show marked results in the public health of the two towns; but an examination of the vital statistics in the offices of the town clerks of the two townships shows that the average death rate for the township of Walton for the last ten years has been 14.35 per thousand, or 1.85 less than the probable rural death rate fixed by the United States Census Bureau; while the average death rate for the township of Delhi during the same ten years has been 17.28 per thousand, or 1.28 above.

LIQUOR REVENUE AND TAXATION.

Each of the towns has a bonded debt, assumed to aid in building the New York and Oswego Midland Railroad, some twenty-five years ago. Delhi's debt is \$222,000, or about \$1 to each \$4.50 of taxable property in the town at the time the debt was assumed. Walton's debt is \$138,000, or about \$1 to every \$5.60 of property at the date of assumption. Keeping this in mind, the following fact is worthy of consideration. The tax rate of the township of Delhi, the town that has regularly received liquor-license revenue, has for the past ten years averaged \$20.10 per thousand, while the average rate in Walton, where there has been no license, has been \$15.19 per thousand.

INCREASE OF PROPERTY VALUES.

It is worthy of notice that the assessed valuation of the town of Walton has in the ten years past risen from \$846,911 to \$1,420,290, an increase of 67.6 per cent, while Delhi's valuation has increased only from \$1,094,448 in 1899 to \$1,204,062 in 1898, or 9.1 per cent.

Delhi has built only one business building of any importance on her main business street in ten years. Walton has erected half a dozen substantial and valuable brick business places within the same time.

Delhi furnishes for its school children a public school building that would not be worth \$3,000. Walton has for years maintained a union free school, for which it has built and furnished within the past few years a splendid building at a cost of nearly \$50,000.

Walton, during the past twelve years, has expended, as nearly as I am able to learn, about \$45,000 in building churches. Delhi has built no new churches, and \$10,000 would be a liberal estimate of all the money spent in church repairs during that period.

DRUNKENNESS AND CRIME.

It ought also to be added that in Walton there has been only one arrest for drunkenness in sixteen months, and that the criminal expenses of the village have been constantly reduced. A few years ago justice fees in criminal cases averaged from \$450 to \$500 per year, while now a police justice attends to all criminal business and receives a salary of \$125 per year for work that at the old rate of fees would not amount to \$100. In Delhi drunkenness and petty crime are common, and criminal expenses show no decrease.

It may not be true that all of Walton's greater prosperity has been due to no license; but, though I have examined conditions here with the utmost care, I am unable to find any reason why Delhi with her many natural advantages, with her naturally progressive and industrious citizens, and with her splendid local history, should have been so outstripped by her rival, save that she has paid to the liquor traffic a constant tribute from the wealth of her people and the manhood of her citizens.

The last illustration was from an Eastern State, let me give you a similar illustration from a Western State, or rather from towns in two

States—one a high license, the other a prohibition State. The following article is from the *New Voice*, of Chicago, of November 23, 1899:

AN EXAMPLE OF THE SUCCESS OF PROHIBITION.

FARGO, N. DAK., November 10, 1899.

The border of a prohibition State is not the most favorable place to study the effectiveness of prohibitory legislation. It is too near the base of liquor supply. It is too convenient for the bibulously disposed to step into the adjoining State and carry a jug full of intoxicants back in his hand or his stomach. This is emphatically the condition in the twin cities of Fargo, N. Dak., and Moorhead, Minn. These towns are situated on opposite sides of the Red River of the North, and transit between them is made easy by ample bridge provision across the small stream. Fargo is under the stringent provisions of North Dakota's prohibitory law, administered by a conscientious and fearless mayor. Moorhead operates saloons under Minnesota's high license statute. The first building as you cross from the Fargo side is a saloon, take which bridge you will. To still further facilitate matters the more enterprising of the Moorhead groggeries run free conveyances to Fargo, each covered with flaming advertisements, offering to take the thirsty individual to the other side of the river and deposit him at the door of a liquor dispensary without cost. These "jag wagons" ply continuously between the cities and, naturally, dump a large cargo of drunkenness into Fargo daily, tending to increase the crime of this city, and reduce its productiveness and thrift. While these conditions reduce the differences between the cities, and make Fargo suffer greatly from a business in which she is not engaged, yet a study of the two places is an interesting and instructive lesson.

Until 1889 both cities were under the same law, practically, as touching the knotty liquor problem. Neither city had pavements, sewers, nor water systems. In November—ten years ago—1889, Dakota went Prohibition. That "killed" Fargo. Many bright and experienced men gave testimony to that fact. The sheep would graze, they said, over the site of the former city, and Moorhead would be the metropolis of the Red River Valley. That was prophecy. The following history is an open book:

POPULATION.

Pettibone's directory of the two cities gives Fargo a population of 10,814 and Moorhead 3,862. This, however, in the face of the fact that about five years ago Fargo was almost wiped off the map by a disastrous fire. This same directory, comparing with its previous issue, shows that Fargo's population increased more than six times as fast as that of her sister city in 1898.

PUBLIC IMPROVEMENTS.

The city clerk of Moorhead and the city auditor of Fargo are the officials of the respective cities who have charge of the records of public improvements, and each has been very courteous and opened his books cheerfully for the inspection of the *New Voice* representative. Moorhead has 11 blocks of cedar pavement, somewhat under 1 mile. Calling it a full mile, for courtesy, it is 1 mile of pavement per 3,862 population. Fargo has 16 miles of pavement, or 1 mile for each 676 of her population. Moorhead has $5\frac{1}{2}$ miles of water mains, or 1 mile for each 702 of her population, while Fargo has 40 miles, or 1 mile for each 270. The business man will appreciate the effect of this fact upon relative fire protection and insurance rates. In sewers, Moorhead has $4\frac{1}{2}$ miles, or 1 mile for each 858 population as against Fargo's 32 miles, making 1 mile for each 338. Prospective residents who value health will not overlook the comparative sanitation herein shown, which fact may, perhaps, partly account for the more rapid growth of the prohibition city.

PRIVATE IMPROVEMENTS.

Official data touching private improvements are not available. The above statistics as to comparative growth, however, will serve as an index to this item. In an extensive drive through Moorhead I have failed to discover a single dwelling or business house in process of construction, and diligent inquiry of several residents furnished no clew to such an enterprise. Mayor Johnson, of Fargo, gives assurance that his estimate of more than a million dollars expended in private buildings in this city during the past three years is conservative, and as good as official. In both

residence and business parts of Fargo building is active. An interview with one man who is putting up a business block in Fargo revealed the fact that he has been in business in Moorhead since 1882. He has lived to see taxes increase, business diminish, and property values dwindle, and he has determined to put up a \$11,000 building in Fargo, and come to this city to retrieve his losses. He states that the Moorhead saloons have stolen his business, and that they are after his children as soon as they step from his door, and he has determined to change both his place of business and his residence, and heartily wishes that he could dispose of his Moorhead real estate at a sacrifice.

CITY DEBT.

The thoughtful business man will immediately conclude that, with all these public improvements above referred to, and with the disastrous fire which destroyed much of the property belonging to the city, Fargo must be much more incumbered with debt than Moorhead. And, when he contemplates the value of the pavements, water system, and sewerage, he will not be disposed to complain—nor will he find cause to do so. With all the superior advantages afforded in Fargo, the city debt is 7.8 per cent of the assessed valuation, while Moorhead, the licensed city, watered by the same river, supported by the same fertile soil, afforded the same transportation privileges, and fully as favorably environed in every way, has a city debt of 20.5 per cent, or over one-fifth of the assessed valuation of her property.

So Moorhead is biggest in some particulars. Mayor Johnson's figures show the per capita city debt in Fargo to be but \$19.50, while Moorhead boasts city obligations aggregating \$44.79 per capita, and Moorhead's city tax rate is over 5 per cent higher than that of Fargo, amounting to 2.183 per cent, as against 1.598 per cent in the prohibition town.

CRIME.

Though Fargo is nearly three times as large, and enjoys such uncomfortable proximity to the 46 saloons of Moorhead, the arrests in Fargo were but slightly more than those of Moorhead, numbering 662, as shown in the last annual report, as compared with 542 on the Minnesota side. This was one arrest for each nineteen population in Fargo, and one for each seven in Moorhead. An interview with the police magistrate of Fargo elicits the statement that it is probable that not less than two-thirds of the arrests in this city are the result of Moorhead whisky. A detailed statement of causes showing 212 to be drunks, 232 vagrants, and 3 others from causes which most usually result from intoxication leads to the conclusion expressed.

Tabular comparison.

	Fargo.	Moorhead.
One mile street pavement for each	676 population.	3,862 population.
One mile water main for each	270 population.	702 population.
One mile sewers for each	338 population.	858 population.
City debt, per capita	\$19.50.	\$44.79.
Ratio of city debt to assessed valuation	7.8 per cent.	20.5 per cent.
City tax levy	1.598 per cent.	2.183 per cent.
One arrest for each	19 population.	7 population.
Assessed value of property, per capita	\$276.	\$219.

But what becomes of the \$23,000 which the 46 saloons of Moorhead pay into the city treasury? Did that money not build sidewalks, erect waterworks, and pay for public improvements? Treasurer Martin Straight is authority for the statement that they never paid for a single plank in a sidewalk; that the saloon system certainly consumes its entire payments to the city, if, indeed, it is not an expense which must be in part borne by the regular taxes of the property. Interviews with various property holders reveal a division of opinion on this proposition, but when the definite figures were attainable, all, regardless of their personal opinions, were forced to say that they had paid their full pro rata for every improvement which the city owns, and that they could point to no improvement which the license fees had helped to provide.

LICENSE ALWAYS A FAILURE.

We have had high license in Illinois five years, and while it is a success as a revenue measure it is an undisguised failure as a temperance measure. It in no way

checks the consumption of intoxicating liquors as a beverage, nor does it in the least degree lessen the evils or crimes from such use. The dives and dens, the barrel houses and thieves' resorts, are as bad and frequent in this city to-day, after five years of high license, as they ever were.—Chicago Daily News.

If any one is still in doubt as to the benefits of prohibition, let him consider carefully the following comparisons:

HIGH LICENSE LINCOLN V. PROHIBITION TOPEKA, 1901.

TWO CAPITAL CITIES LYING ALMOST SIDE BY SIDE, ALMOST THE EQUAL IN SIZE, AND WITH EQUALLY FAVORABLE SURROUNDINGS—THE DEADLY PARALLEL.

Lincoln, Nebr., has 40 saloons, each of which pays the city \$1,000 license yearly. Total revenue, \$40,000.

Lincoln has numerous unlicensed joints and low dives. High license has not suppressed them. High license never does suppress them.

Lincoln declares she must have her saloon revenue to pay her public school teachers and keep up her schools.

Notwithstanding Lincoln's income from taxation of vice her average levy to pay the expenses of her schools is nearly 2 mills higher than that of Topeka. Her levy for city purposes only is 37½ mills.

Lincoln pays in annual salaries to her city superintendent of schools and to her principal of the high school \$4,200.

Lincoln, despite her boasted saloon revenue "for school purposes," pays her—

(1) High school teachers an average per month (nine months) of but	\$75.00
(2) Principals of graded schools an average per month of but ..	70.33
(3) Graded school teachers an average per month of but ..	52.73

General average for high-license Lincoln

66.02

Monthly excess in favor of Topeka's teachers

10.58

Yearly excess in favor of Topeka's teachers

95.04

Wherein does saloon revenue "for school purposes" profit the teachers of Lincoln, Nebr.?

THIS IS HOW LICENSE BENEFITS A CITY.

Cambridge, Mass., had licensed saloons 1876-1886—ten years. No license, 1886-1896—ten years:

Gain in population, ten license years	11,280
Gain in population, ten no-license years	21,985
Gain in new houses, ten license years	1,516
Gain in new houses, ten no-license years	3,325
Loss in taxable property, ten license years	\$3,190,783
Gain in taxable property, ten no-license years	\$23,702,030
Gain in savings banks deposits each license year	\$155,333
Gain in savings banks deposits each no-license year	\$366,654

Number of workmen employed by street department:

Gain in ten license years	32
Gain in ten no-license years	90

Read it again. See how no license benefits a city.

During this hearing these brewers and their friends have made frequent references to the beneficial effects of beer. Mr. Oberman, the Baltimore brewer, said that the brewers were greater factors in temperance than the temperance cranks would ever become, for as the consumption of beer increases the consumption of distilled liquor decreases, and that if the nervous, high-strung business man of to-day would drink more beer he would be better off. Another speaker said, "Beer is not an intoxicant;" another, "A glass of beer is a good friend," etc.

I want to call your attention to a document of the International Reform Bureau, entitled "Scientific Testimony on Beer," which refutes all such statements. It is a reprint of part of the speech of Senator J. H. Gallinger, M. D., given in the United States Senate January 9, 1901. It is the testimony of eminent physicians showing the injurious and disastrous effects of beer drinking. I submit herewith extracts from Senator Gallinger's speech referred to, which ought to be read by every beer drinker in the United States and by every defender of beer drinking.

SCIENTIFIC TESTIMONY ON BEER.

[From speech by Senator J. H. Gallinger, M. D., January 9, 1901.]

OPINIONS OF LEADING PHYSICIANS.

The alarming growth of the use of beer among our people, and the spreading delusion among many who consider themselves temperate and sober that the encouragement of beer drinking is an effective way of promoting the cause of temperance and of aiding to stamp out the demon rum, impelled the Toledo Blade to send a representative to a number of the leading physicians of Toledo to obtain their opinions as to the real damage which indulgence in malt liquors does the victim of that form of intemperance.

Every one is not only a gentleman of the highest personal character, but is a physician whose professional abilities have been severely tested and received the stamp of the highest indorsement by the public and their professional brethren. More skillful physicians are not to be found anywhere. We have not selected those of known temperance principles. What they say of beer is not colored by any feeling for or against temperance, but is the cold, bare experience of men of science who know whereof they speak.

A BEER DRINKING CITY.

Toledo is essentially a beer drinking city. The German population is very large. Five of the largest breweries in the country are here. Probably more beer is drank, in proportion to the population, than in any other city in the United States. The practice of these physicians is, therefore, largely among beer drinkers, and they have had abundant opportunities to know exactly its bearings on health and disease.

Every one bears testimony that no man can drink beer safely, that it is an injury to anyone who uses it in any quantity, and that its effect on the general health of the country has been even worse than that of whisky. The indictment they with one accord present against beer drinking is simply terrible.

The devilish crushing a man in his long, winding arms, and sucking his blood from his mangled body, is not so frightful an assailant as this deadly but insidious enemy, which fastens itself upon its victim, and daily becomes more and more the wretched man's master, clogging his liver, rotting his kidneys, decaying his heart and arteries, stupefying and starving his brain, choking his lungs and bronchia, loading his body with dropsical fluids and unwholesome fats, fastening upon him rheumatism, erysipelas, and all manner of painful and disgusting diseases, and finally dragging him to his grave at a time when other men are in their prime of mental and bodily vigor. Here are their statements:

BEER KILLS QUICKER THAN OTHER LIQUOR.

Dr. S. H. Burgen, a practitioner thirty-five years, twenty-eight in Toledo, says: "I think beer kills quicker than any other liquor. My attention was first called to its insidious effects when I began examining for life insurance. I passed as unusually good risks five Germans—young business men—who seemed in the best health, and to have superb constitutions. In a few years I was amazed to see the whole five drop off one after another with what ought to have been mild and easily curable diseases. On comparing my experience with that of other physicians, I found they were all having similar luck with confirmed beer drinkers, and my practice since has heaped confirmation on confirmation.

"The first organ to be attacked is the kidneys; the liver soon sympathizes, and then comes, most frequently, dropsy or Bright's disease, both certain to end fatally. Any physician, who cares to take the time, will tell you that among the dreadful results of beer drinking are lockjaw and erysipelas, and that the beer drinker seems incapable of recovering from mild disorders and injuries not usually regarded of a grave character. Pneumonia, pleurisy, fevers, etc., seem to have a first mortgage on him, which they foreclose remorselessly at an early opportunity.

BEER WORSE THAN WHISKY.

"The beer drinker is much worse off than the whisky drinker, who seems to have more elasticity and reserve power. He will even have delirium tremens, but after the fit is gone you will sometimes find good material to work upon. Good management may bring him around all right. But when a beer drinker gets into trouble it seems almost as if you have to re-create the man before you can do anything for him. I have talked this for years and have had abundance of living and dead instances around me to support my opinions."

Dr. S. S. Thorne, a physician of experience in the Army and twenty years' practice in Toledo, said: "Adulterants are not the most important things in my estimation, it is the beer itself. It stupefies his intellect because it is a narcotic and cumulative in its effects. For instance, mercurials are cumulative. A dose of one-sixteenth or one thirty-second of a grain would have no appreciable effect on the system, but a number of these administered consecutively would soon produce salivation and other destructive results. So beer accumulates and gathers pernicious agencies in the system until they become very destructive."

BEER DRINKING SHORTENS LIFE.

Dr. S. S. Lungren, a leading homeopathic physician and surgeon, has practiced in Toledo twenty-five years. "It is difficult to find any part of the confirmed beer drinker's machinery that is doing its work as it should. This is why their life cords snap off like glass rods when disease or accident gives them a little blow. Beer drinking shortens life. This is not a mere opinion; it is a well-settled, recognized fact. Physicians and insurance companies accept this as unquestioningly as any other undisputed fact of science. The great English physicians decide that the heart's action is increased 13 per cent in its efforts to throw off alcohol introduced into the circulation. The result is easily figured out. The natural pulse beat is, say, 76 per minute. If we multiply this by sixty minutes in an hour, and twenty-four hours in a day, and add 13 per cent, we find that the heart has been compelled to do an extra work during that time in throwing off the burden of a few drinks (4.8 ounces of alcohol) equal to 15.5 tons lifted one foot high.

"Everywhere it is degeneration, and the ruinous work is not confined to the notorious drinkers; but everyone must suffer just in proportion to the amount he or she drinks. He diminishes his present powers, shortens his life, and wrecks himself."

"A LITTLE CIRCLE OF DOCTORS."

Dr. S. S. Thorne: "If you could drop into a little circle of doctors, when they are having a quiet, professional chat, you would hear enough in a few minutes to terrify you as to the work of beer. One will say, 'What's become of So-and-So? I haven't seen him around lately.' 'Oh, he's dead.' 'Dead! What was the matter?' 'Beer.' Another will say, 'I've just come from Blank's. I am afraid it's about my last call on him, poor fellow.' 'What's the trouble?' 'Oh, he's been a regular beer drinker for years.' A third will remark how —— has just gone out like a candle in a draft of wind. 'Beer' is the reason given. And so on, until half a dozen physicians have mentioned 50 recent cases where apparently strong, hearty men, at a time of life when they should be in their prime, have suddenly dropped into the grave. To say they are habitual beer drinkers is sufficient explanation to any physician."

LIFE INSURANCE COMPANIES.

"The life insurance companies make a business of estimating men's lives, and can only make money by making correct estimates of whatever influences life. Here is a table they use in calculating how long a normal, healthy man will probably live after a given age:

Age.	Expectation (years).	Age.	Expectation (years).
40 years.....	28.3	50 years.....	20.2
20 years.....	41.5	60 years.....	13.8
30 years.....	34.4	65 years.....	11

"Now they expect a man otherwise healthy, who is addicted to beer, will have his life shortened from 40 to 60 per cent. For instance, if he is 20 years old and does not drink beer, he may reasonably expect to reach the age of 61. If he is a beer drinker, he will probably not live to be over 40 or 45, and so on. There is no sentiment, prejudice, or assertion about these figures. They are simply cold-blooded business facts, derived from experience; and the companies invest their money on them just as a man pays so many dollars for so many feet of ground or bushels of wheat."

BEER DRINKING AND LONGEVITY.

The president of the Connecticut Mutual Life Insurance Company—one of the oldest in the country—has for years been investigating the relation of beer drinking to longevity, or otherwise, whether beer drinkers are desirable risks to a life insurance company.

He declared, as the result of a series of observations carried on among a selected group of persons who were habitual drinkers of beer, that although for two or three years there was nothing remarkable, yet presently death began to strike, and then the mortality became astounding and uniform in its manifestations. There was no mistaking it; the history was almost invariable; robust, apparent health, full muscles, a fair outside, increasing weight, florid faces; then a touch of cold or a sniff of malaria, and instantly some acute disease, with almost invariable typhoid symptoms, was in violent action, and ten days or less ended it. It was as if the system had been kept fair on the outside, while within it was eaten to a shell, and at the first touch of disease there was utter collapse; every fiber was poisoned and weak. And this in its main features, varying in degree, has been his observation in beer drinking everywhere. It is peculiarly deceptive at first; it is thoroughly destructive at the last.

MAKES RECOVERY FROM INJURY DIFFICULT.

Dr. S. S. Lungren: "Alcohol causes a dilation of the superficial blood vessels, as it does of all of them, in fact. This gives the ruddy look. It is really an unhealthy congestion there and everywhere. Everywhere—heart, brain, stomach, liver, kidneys, lungs—it breaks down, weakens, enfeebles, and invites attacks of disease, and makes recovery from any attack or injury precarious and difficult."

Dr. C. A. Kirkley, in constant practice in Toledo fifteen years, says: "I do not believe the healthy organism needs an artificial prop to sustain it. Depression below the standard of health always follows just in proportion as the system is stimulated above that standard. Its effect on nutrition, the nervous system, and the circulation must be injurious. * * * Every physician is familiar with cases in which nervous wear and tear in an active life has been kept up by stimulants without apparent loss of power for years. Bodily and mental vigor, however, suddenly fail. The repeated application of the stimulus that the exertion might be prolonged has really expended the power of the nervous system and prepared him for more complete prostration. The temporary advantage was purchased at a great cost. The greater the expenditure of nervous power by the use of stimulants, the more complete the exhaustion. * * * On the other hand, the man who has abstained from alcoholic beverages, having overtaxed his nervous system, only needs a short period of rest and change for the renovation of his system and the recovery of mental and bodily vigor. My experience is that sickness is always more fatal in beer drinkers, and serious accidents are usually fatal with them."

BEER DRINKERS UNPROMISING PATIENTS.

Dr. J. T. Woods: "That confirmed beer drinkers are especially unpromising patients all practical surgeons agree."

Dr. S. H. Burgen: "Beer drinkers are absolutely the most dangerous class of subjects a surgeon can operate on. Insignificant scratches are liable to develop a long train of dangerous troubles. The choking up of the sewers and absorbents of the body brings about blood poisoning and malignant running sores; and sometimes delirium tremens results from a small hurt. It is dangerous for a beer drinker to even cut his finger. No wound ever heals by first intention, but takes a long course of suppuration, sometimes with very offensive discharges. All surgeons hesitate to perform operations on a beer drinker that they would undertake with the greatest confidence on anyone else."

BEER CRIPPLES THE LIVER.

Dr. S. H. Burgen: "The first effect on the liver is to congest and enlarge it. Then follows a low grade of inflammation and subsequent contraction of the capsules, producing 'hobnailed' or 'drunkard's liver,' the surface covered with little lumps that look like nail heads on the soles of shoes. This develops dropsy. The congestion of the liver clogs up all the springs of the body, and makes all sorts of exertion as difficult and labored as it would be to run a clock the wheels of which were covered with dirt and gum."

Dr. W. T. Ridenour, during the war surgeon of the Twelfth Ohio Infantry, medical inspector of the Department of West Virginia, has resided in Toledo fourteen years, served as health officer, and been lecturer in the Toledo medical schools. The following is his testimony:

"Beer drinking overloads it, clogs it up, producing congestion, and permanently cripples it. One function of the liver is to separate from the blood excrementitious and effete substances that should be thrown off through the kidneys in the urine. Naturally, when the working capacity of the liver is crippled, the salts—urea and the urates—are imperfectly elaborated and thrown into the blood and kidneys as uric acid, which is very irritating to those organs and produces a long train of harmful sequelæ."

BRIGHT'S DISEASE DUE TO BEER.

Dr. W. T. Ridenour: "I have no doubt the rapid spread of Bright's disease is largely due to beer drinking. I have always believed that Bayard Taylor fell a victim to the German beer that he praised so highly. He died of Bright's disease at 50, when he should have lived, with his constitution, to a green old age. He went just as beer drinkers are going all the time and everywhere."

Dr. C. A. Kirkley: "I believe that forty-nine out of fifty cases of chronic Bright's disease are directly produced by it. I have never met with a case in which the patient has not been intemperate to a greater or less degree. The proportion may be too high, but that is certainly my experience. Mr. Christian, a celebrated author, states that three-fourths to four-fifths of the cases met with in Edinburgh were in habitual drunkards."

LIABLE TO DIE OF PNEUMONIA.

Dr. W. T. Ridenour: "Beer drinkers are peculiarly liable to die of pneumonia. Their vital power, their power of resistance, is so lowered that they are liable to drop off from any form of acute disease, such as fevers, pneumonia, etc. As a rule when a beer drinker takes the pneumonia he dies."

"My first patient was a saloon keeper, as fine a looking man physically as I had ever seen—tall, well built, about 35, with clear eyes, florid complexion, muscles well developed. He had an attack of pneumonia in the lower lobe of the right lung, a simple, well-defined case, which I regarded very hopefully. Doctors are confident of saving 19 out of 20 such cases. I told my partner so in the evening. To my surprise he said quietly, 'He'll die.' I asked what made him think so. 'He is a beer drinker,' he answered. My patient began to recover from the attack on the lower lobe. Suddenly the disease lighted up in the middle lobe. Finally it attacked the other lung, and my patient succumbed."

DROPSY INDUCED BY BEER DRINKING.

Dr. M. H. Parmalee, physician and surgeon twelve years in Toledo, says: "The majority of saloon keepers die from dropsy, arising from kidney and liver diseases, induced by beer drinking. My experience has been that saloon keepers and men working around breweries are very liable to these diseases. When one of these apparently stalwart, beery fellows is attacked by a disorder that would not be regarded as at all dangerous in a person of ordinary constitution, or even a delicate,

weakly child or woman, he is liable to drop off like an overripe apple from a tree. You are never sure of him a minute. He may not be dangerously sick to-day, and to-morrow be in his shroud. Most physicians, like myself, dread being called upon to take charge of a sick man who is an habitual beer drinker. The form of Bright's disease known as the swollen or large white kidney is much more frequent among beer drinkers than any other class of people."

SIGHT LOST—DRUNKARD'S BLINDNESS.

Dr. J. H. Curry, whose specialty is diseases of eye and ear, a practitioner many years, says:

"Oculists have to contend with a disease that has been named 'amblyopia potatorum,' or drunkard's blindness, which actually manifests itself as an atrophy of the optic nerve. When this proceeds to a certain stage the result is total incurable blindness.

"Soelberg Wells, one of the first authorities on eye diseases, says on amblyopia: 'This toxic effect may be produced by alcohol, tobacco, lead, or quinine. The amblyopia met with in drunkards generally commences with the appearance of a mist or cloud before the eyes, which more or less surrounds and shrouds the object, rendering it hazy and indistinct. In some cases the impairment becomes so that only the largest print can be deciphered; but the sight may be completely lost.'

"Stellwagen on the Eye, another author of highest repute, says: 'By the complete giving up of alcoholics the disease may be brought to a standstill and often cured.'

INSANITY CAUSED BY BEER DRINKING.

Dr. S. S. Lungren: "The brain and its membranes suffer severely, and after irritation and inflammation comes dullness and stupidity. There is no question in my mind that many brain diseases and cases of insanity are caused by excessive beer drinking."

Dr. C. A. Kirkley: "Under its influence the mental powers are more inactive than the physical. There is hardly a single cause that operates more powerfully in the production of insanity; and not only that, but it excites the action of other causes that may be present."

BEER DRINKING PRODUCES RHEUMATISM.

Dr. W. T. Ridenour: "Beer drinking produces rheumatism by producing chronic congestion and ultimately degeneration of the liver, thus interfering with its function by which the food is elaborated and fitted for the sustenance of the body, and the refuse materials oxidized and made soluble for elimination by the kidneys, thus forcing the retention in the body of the excrementitious and dead matter I have spoken of. The presence of uric acid and other insoluble effete matters in the blood and tissues is one main cause of rheumatism."

Dr. S. H. Burgen: "All beer drinkers have rheumatism, more or less, and no one can recover from it as long as he drinks beer. Notice how a beer drinker walks about stiff on his heels, without any of the natural elasticity and spring from the toes and ball of the foot that a healthy man should have. That is because the beer increases the lithia deposits about the smaller joints."

CHILDREN OF DRUNKARDS—IDIOTS.

Dr. C. A. Kirkley: "Plutarch says, 'One drunkard begets another;' and Aristotle, 'Drunken women bring forth children like unto themselves.' A report was made to the legislature of Massachusetts, I think by Doctor Howe, on idiocy. He had learned the habits of the parents of 300 idiots, and 145, nearly half, are reported as known to be habitual drunkards, showing the enfeebled constitution of the children of drunkards. I have in mind an instance where children born to the mother, begotten when the father was intoxicated, all died within eight months of birth. They would have recovered had they not had the enfeebled constitution inherited from their intemperate father. Instances are recorded where both parents were intoxicated at the time of conception, and the result was an idiot. There is not a doubt but that inebriety not only makes more destructive whatever taint may exist, but impairs the health and natural vigor for remote generations."

"A CROP OF LUNATICS."

Dr. A. McFarland: "That 'the iniquities of the fathers are visited upon the children,' that 'the fathers have eaten sour grapes and the children's teeth are set on edge,' are truths that no Scripture is needed to teach. In other words, he who sins through physical excess does not do half the harm to himself that he does to the inheritors of his blood. The penalty must be paid as sure as there is seed time and harvest.

"It is your stout old hero, who goes to bed every night with liquor enough under his belt to fuddle the brains of a half dozen ordinary men, and yet lives out his three score and ten, that will be found at the head of the stock that pour into the world, generation after generation, such a crop of lunatics, epileptics, eccentrics, and inebriates as we often see. The impunity with which one so constituted will violate all physical law gets its set-off in a succeeding generation, when the great harvest begins."

ONLY ONE SAFE COURSE.

Dr. J. T. Woods: "That beer is foreign to nature's demand is plainly evident. The whole organism at once sets about its removal. Every channel through which it can be got rid of is brought into play, and does not cease till the last trace is gone. Reaching a certain end depends only on the frequency of the repetition. The whole is made up of the parts; every drink counts one. These 'ones' added together make the wreck; to secure this result it is only necessary to make the single numbers sufficient. Each leaves its footprints in one way or another; and the idea that, because you stop before you stagger, the system takes no note of the damaging material you put into it is a ruinous delusion."

Dr. S. H. Burgen: "I have told you the frozen truth—cold, calm, scientific facts, such as the profession everywhere recognizes as absolute truths. I do not regard beer drinking as safe for anyone. It is a dangerous, aggressive evil that no one can tamper with with any safety to himself. There is only one safe course, and that is to let it alone entirely."

WHY KIPLING DECLARED FOR PROHIBITION.

One of the speakers at this hearing declared that beer was not an intoxicant, and emphasized his opinion by repeating it. Some people who oppose the average saloon, which even Bonfort's Wine and Spirit Circular says "is a nuisance, a resort for all tough characters, and a disgrace to the wine and spirit trade," yet favor the public beer gardens such as are to be found in many large cities. To all such, allow us to call attention to Rudyard Kipling's testimony.

In his American Notes, page 121, Rudyard Kipling, whose stories and poems are read by all the English-speaking world, tells how, in a concert hall in the city of Buffalo, he saw two young men get two girls drunk and then lead them reeling down a dark street. Mr. Kipling has not been a total abstainer, nor have his writings commended temperance, but of that scene he writes:

In the heart of Buffalo there stands a magnificent building which the population do innocently style a music hall. Everybody comes here of an evening to sit around the little tables and listen to a first-class orchestra. Here I went with a friend—poor or boor is the man who can not pick up a friend for a season in America—and here were shown the really smart folk of the city.

One sight of the evening was a horror. The little tragedy played itself out at a neighboring table where two very young men and two very young women were seated. It did not strike me until far into the evening that the pimply young reprobates were making the girls drunk. They gave them red wine and then white, and their voices rose with the maiden cheeks' flushes. I watched, and the youths drank till their speech thickened and their eyeballs grew watery. It was sickening to see, because I knew what was going to happen. My friend eyed the group and said:

"Maybe they're children of respectable people. I hardly think that, though, or they wouldn't be allowed out with no better escort than those boys. And yet the place is one where everybody comes, as you see. There may be little immoralities,

but in that case they wouldn't be so hopelessly overcome with two or three glasses of wine. They may be"—

But whatever they were they got intolerably drunk—there in that lovely hall, surrounded by the best of Buffalo society. One could do nothing except invoke the judgment of heaven on those two boys, themselves half sick with liquor.

At the close of the musical performance the quieter maiden laughed vacantly and protested she could not keep her feet. The four, linked arms and staggering, flickered out into the street—drunk, gentlemen and ladies, as Davy's swine—drunk as lords. They disappeared down a side avenue, but I could hear their laughter until long after they were out of sight. And they were all children of 16 or 17.

Then, recanting previous opinions, I became a Prohibitionist. Better it is that a man should go without his beer in public places and content himself with swearing at the narrowmindedness of the majority; better it is to poison the inside with very vile temperance drinks, and to buy lager furtively at back doors, than to bring temptation to the lips of young fools, such as the four I had seen. I understand now why the preachers rage against drink. I have said, "There is no harm in it, taken moderately," and yet, my own demand for beer helped directly to send these two girls reeling down the dark street to—God alone knows what end. If liquor is worth drinking, it is worth taking a little trouble to come at—such trouble as a man will undergo to compass his own desires. It is not good that we shall let it lie before the eyes of children, and I have been a fool in writing to the contrary.

WHY MINISTERS SHOULD FAVOR THIS BILL.

The opponents of this bill brought on several German ministers from New York and elsewhere to testify at this hearing, who denounced prohibition and advocated beer drinking. We are ashamed of the ministerial profession when we find any representative of it marshaled on the side of the illegal rumseller. All such ministers ought to consider carefully the following opinions:

As a Christian minister I oppose drink, because it opposes me. The work I try to do it undoes. It is an obstacle to the spread of the Gospel—nay, it is an enemy which assails the Gospel and whose complete success would drive the Gospel from the earth.—Bishop C. D. Foss.

This traffic has wrought more harm than the three great historic scourges—war, famine and pestilence combined.—Gladstone.

The liquor traffic exists in this country today only by the sufferance of the membership of the Christian churches. They are masters of the situation so far as the abolition of the traffic is concerned. When they say "Go," and vote "Go," it will go.—Hon. Neal Dow.

It is a flat contradiction, it is a moral dishonor, for the church with one hand to excommunicate rumsellers and with the other hand to vote to legalize rumselling.—Joseph Cook.

We can never create a public sentiment strong enough to suppress the dramshops, until God's people take hold of the temperance reform as a part of their religion. The time is ripe for a new campaign in opposition to this evil. An appeal is now made to the churches to open a fresh warfare against the bottle wherever found—in the social circle, on the household board, or on the counter of the saloons.—Dr. T. L. Cuyler.

The Church of to-day, much more the Church of the future, must take to its heart the duty of combining and massing its forces against that gigantic atrocity of Christian civilization that mothers nine-tenths of the woes and sorrows that blight and curse our modern age—the traffic in intoxicants, which hides its deformity under forms of law. The conflict is now upon us. The Church must lead in this reform. This is her most peculiar province. It comes in the line of the great class of moral issues of which she is the recognized guardian. The rum hole must be closed or the rum hell will engulf Christendom. If ever the pulpit had a right, the duty to flame with unsparing rebuke, it is here.—Bish: p R. S. Foster.

Every minister of the Gospel in the United States ought to favor the Hepburn-Dolliver bill, and from wide travel and observation I believe that nine-tenths of them do favor it.

One of the German speakers at this hearing, who is opposed to this temperance measure, spoke of the many petitions which his society

sent to Congress in favor of opening the Chicago Exposition on the Sabbath day. I would like to recommend for his careful reading, and for the careful reading of all other persons who think it would be a good thing to open any exposition on the Sabbath day, the document issued by the International Reform Bureau, entitled "Sunday closing of expositions," which is a reprint from the Congressional Record of speeches made by Senators Hawley and Colquitt, and of Congressman Dingley. This is the strongest defense of Sabbath closing of expositions that I have ever seen. The same objections to opening the Chicago Fair on the Sabbath hold against the opening of the St. Louis, Portland, and the Jamestown, or any other expositions on the Sabbath. The document referred to ought to have a wide reading, as it makes very clear why all expositions should be closed on the Sabbath day. These speeches can be found in the Congressional Record of July 11, 12, and 18, 1892.

THE HOME-RULE ARGUMENT.

Many of these same Germans who oppose this bill come from New York, where they are making a great cry for home rule as to opening the saloons on Sunday. This Hepburn bill is distinctly a home-rule bill, a bill to let the different States manage the liquor traffic as they please. Why should the Germans demand home rule for New York and oppose home rule for Iowa or Maine? If they are really honest in their cry for home rule in New York, why do they oppose the Hepburn-Dolliver bill, which will give home rule to every State in the Union on the liquor question?

GREAT INTEREST IN THE HEPBURN-DOLLIVER BILL.

The general interest being manifested in this measure by its friends and foes can be seen by the many news items being sent out over the country from Washington concerning it. Here is a sample of such news items:

More brewers, agents of distillers, and wholesalers of wines and liquors are arriving in Washington to urge the defeat of the Hepburn bill, which aims to give States with local option and prohibition laws complete jurisdiction over wines and liquors shipped from other States, regardless of whether they are shipped in original packages or in bulk. The brewers and liquor men are thoroughly alarmed. They are ascertaining from Senators that the temperance societies of the country are fairly flooding them with letters, telegrams, and petitions which urge the immediate passage of the bill.

To those liquor men who have said at this hearing, that the cause of prohibition was everywhere going back, the following quotation from one of their own liquor papers, Boufort's Wine and Spirit Circular, may be interesting reading to them:

A wave of prohibition is sweeping over this country from one end to the other that threatens to engulf and carry to destruction the entire whisky enterprise. It is growing stronger each day, and each day towns, cities, counties, and even States are added to that class in which the whisky business can not be carried on legitimately.

CLOSING APPEAL.

Mr. Chairman, for all these reasons, the honor of the nation, the rights of the States, the interests of local self-government, and the welfare of humanity, all demand that this Hepburn-Dolliver bill should be quickly recommended by your committee and promptly passed by Congress.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Thursday, March 24, 1904.

The committee met at 11 o'clock, a. m., Hon. John J. Jenkins in the chair.

STATEMENT OF W. M. HOUGH, ESQ., ST. LOUIS, MO.

Mr. Chairman and gentlemen of the committee, when I appeared before you on the 4th instant I endeavored to establish three propositions. The first was that the necessity for the proposed legislation which was supposed to exist did not exist in fact. In other words, that no additional legislation was needed to remove any obstacle in the way of the States enforcing their police regulations concerning the manufacture or sale of intoxicating liquors. Second, that the practical effect of this measure would be to accomplish only the very thing alleged by all its advocates not to be their purpose. And third, that the legal effect of the bill would be such as has already been declared by the Supreme Court would be unconstitutional.

In a subsequent communication to this committee I stated that if you believed any one of these propositions to be true I did not see how you could consistently report this measure, and that if you did not believe all of these propositions to be true it might be due in part to the fact that there had not been a sufficient discussion of them.

I am inclined to believe that every member of this committee believes every one of those propositions to be true, and if I may be mistaken on that point and there should be any doubt in the mind of any member of this committee, I hope that such doubt may be dispelled by questions or otherwise, because I am here to-day to do all in my power to resolve that doubt into certainty.

Mr. ALEXANDER. How many propositions were there? You spoke of several propositions.

Mr. HOUGH. Three propositions.

Mr. ALEXANDER. Now, will you briefly summarize them? I was not here to hear your remarks the other day, and I would like you to briefly state those propositions.

Mr. HOUGH. First, the necessity for the legislation which was supposed to exist, which was stated by the members on the floor to exist which was stated in the report of this committee at the time this bill was reported in the last Congress as existing, did not in fact exist. It had been alleged that it was necessary to have this legislation to enable the States to enforce their police regulations with reference to the sale of intoxicating liquors. I demonstrated that it was not necessary in order to enable the States to enforce their police regulations against either the manufacture or sale of intoxicating liquors within the State.

Second, I stated and demonstrated, as I believe, that the only effect of the bill would be to accomplish the very thing alleged by all its advocates not to be their purpose.

And third, whether or not the practical effect of the bill was the hidden or secret purpose of its advocates, its legal effect would be such as has already been declared by the Supreme Court would be

unconstitutional, as being a delegation to the States of the power to regulate an interstate shipment.

Mr. ALEXANDER. Now, on that last proposition, was your argument along the line of Mr. Sherley's?

Mr. HOUGH. I probably took it up where he left off. My argument on that point has been printed, I see, and I am not now following the argument exactly as it was made at that time, but I am proposing to present a few new reasons why those propositions are true, and that can probably best be accomplished by referring to some of the arguments of some of those who have favored this measure.

Recalling what I heard of the oral arguments and what I have read of the printed arguments on this subject I think possibly the statement of Judge Smith, of Iowa, went more directly to the point than the statement of any of the other gentlemen before this committee on that side, and yet I regret to say that he made hardly more than one statement with which I can agree. That was that the real issue does not involve prohibition or antiprohibition, temperance or intemperance, and in making that admission I submit, in all candor, that Judge Smith admitted away his entire case. At any rate, he clearly admitted the truth of my first proposition.

When any legislation is suggested which has for its purpose enabling the States to carry into effect prohibition, there is necessarily involved the sociological aspect of that question; but if legislation is suggested which has no bearing upon that proposition and if legislation is not needed for that purpose, then certainly the sociological view is not involved, and I think I am indebted to the gentleman for making that proposition so clear. Therefore, it must be admitted, or considered as admitted, that there is no necessity for the proposed legislation so far as to enable the States to enforce their police regulations against the sale of intoxicating liquors, within the States, is concerned.

Yet, notwithstanding this statement by Judge Smith, he was illogical enough later on in his argument to refer to the conditions which existed in Iowa and to the necessity of this law to enable them to cope with those conditions and stated, furthermore, that the purpose of this bill is to accomplish the very thing intended to be accomplished by this committee and by Congress at the time the Wilson bill was reported and passed. Waiving this illogicality, I desire to take issue with that statement of fact, and I feel sure that it was made without due consideration of the arguments which were made in the House and Senate on that measure, and without due consideration of the action which was taken by this committee at that time.

That bill was introduced in the Senate by Mr. Wilson, of Iowa, in the first session of the Fifty-first Congress, December 4, 1889, and was referred to the Committee on the Judiciary. It was reported back May 14, 1890, with an amendment and debated. The debate in the Senate ran through a period of two months, and the bill finally passed the Senate in the form of the present law.

The incidental right of sale in an original package, contrary to State legislation, was the only phase thought to be reached by the bill as declared by all its advocates, and Mr. Edmunds, in discussing the effect which the decision of the courts in the case of *Leisey v. Hardin*, had

had on the business of selling intoxicating liquors within the State and the necessity for the proposed legislation, stated:

Now, Congress proposes to say that the right to import is not to carry the implication of the right to sell against the policy of the State; but if you import at all, you must import, and when you have got it there it must take its chance with all the other property in the State where the health and safety of the State are concerned.

Now, it is clear from this statement, as well as from the statements of all the others who advocated that measure in the Senate, that the sole purpose of the legislation in the Senate was to cut out the incidental right of sale in the original package and not to interfere in any degree with an interstate shipment before delivery to the consignee.

Mr. Reed, of Iowa, reported the bill to the House from the Committee on the Judiciary, but instead of reporting the Senate bill reported as follows:

Strike out all after the enacting clause and insert the following:

"That whenever any article of commerce is imported into any State from any other State, Territory, or foreign nation, and there held and offered for sale, the same shall then be subject to the laws of such State: *Provided*, That no discrimination shall be made by any State in favor of its citizens against those of other States or Territories in respect to the sale of any article of commerce, nor in favor of its own products against those of like character produced in other States or Territories. Nor shall the transportation of commerce through any State be obstructed, except in the necessary enforcement of the health laws of such State."

I call your particular attention to the words "and there held and offered for sale" as indicating clearly that it was not the intent to have the State laws apply until after delivery to the consignee.

Mr. Taylor, in stating the case to the House (page 7427), said that under the decision of the Supreme Court in the case of *Brown v. Houston* it was thought that an interstate shipment became massed with the general property of the State so as to be subject to the State laws when it had reached its destination in the State, and that the decision of the Supreme Court in the case of *Leisey v. Hardin* had come as a great surprise to lawyers as well as laymen in holding that it did not become so massed until after the first sale in the original package. Under that decision he said:

Not only must the property be consigned and delivered in the States ready for sale and offered for sale, but it must be once sold before interstate commerce ceases and commerce within the State begins.

It is this addition which has made the trouble and which was unexpected.

Now, what was the addition? Only the right of sale in the original package after it had reached the consignee. Could the purpose of Congress and the purpose of this committee be more clearly defined than that? And on the same point Mr. Reed, of Iowa, said:

I think no one would doubt the power of Congress to enact such a law; that is, a law providing that when intoxicating liquors are carried into that State as articles of commerce they shall be sold only for the purpose prescribed by the statutes of the State and under restrictions similar to those contained in the laws of that State. The pending bill would simply reach the same result in another way. Instead of prescribing, as Congress might, in specific terms the restrictions which shall be imposed upon its traffic, its effect would be to subject it to those restrictions, so that in either case the same result would be reached. The one enactment would as certainly operate as a regulation of the traffic as would the other.

I refer to this statement of Mr. Reed not as indorsing the legal views expressed therein, which may touch upon the question of the power

of delegation or the right to delegate a part of the power, but to indicate in connection with everything else that was said by all the members of the House, and by all of the members of the Senate, in connection with the report of this bill from this committee, that the sole purpose attempted to be accomplished at that time was to cut out the incidental right of sale, and not, as was argued by the State of Iowa in the Rhodes case, and has been stated by the advocates of the bill before this committee, to interfere with the shipment before delivery to the consignee.

The House substitute was adopted by the House and the bill went to conference; the Senate refused to recede and the House did, and in asking the House to concur Mr. Reed stated that the only difference between the Senate bill and the House bill was that the Senate bill applied to intoxicating liquors only and the House bill was intended to apply to all commodities.

It is therefore perfectly apparent that all the statements which have been made before this committee to the effect that the proposed legislation is necessary in order to overcome the restricted construction of the Wilson law by the Supreme Court in the Rhodes case and to accomplish what was the original purpose of the Wilson law are not supported by the facts. But it is perfectly clear that the construction given the Wilson act by the Supreme Court in the Rhodes case accomplishes precisely the purpose which was proposed to be accomplished by the passage of that law.

The position taken by the prohibitionists which led to the issue presented in the Rhodes case was clearly an afterthought, based upon the hope that the language used could be so twisted or distorted as to accomplish something more than the original purpose.

In view of these facts, can any gentleman on this committee any longer claim that the proposed legislation is necessary to enable the States to apply their laws against the sale of intoxicating liquors, or that it is necessary to accomplish what was proposed to be accomplished at the time the Wilson law was passed, or that the Supreme Court in its decision in the Rhodes case in anywise restricted that purpose? I think clearly not.

If the purpose of the advocates of this bill and of the members of the committee who might be inclined to favor it, based upon the statements of those advocates, is sincere, and they mean to accomplish only that, why not report the same bill which was reported by this committee at that time, and then there will be no doubt about accomplishing what you intended to accomplish at that time?

In answer to questions from Mr. Clayton and Judge De Armond as to the difference in the wording of the proposed bill and the wording of the Wilson bill, especially with reference to the words "within the boundaries of," Judge Smith stated that there was no difference, or at least that he would be very glad to be told what the difference was. It seems to me that the difference is radical. The words in the Wilson law, "shall upon arrival in such State or Territory," taken in their commercial and legal sense carry with them the idea of destination, whereas the words in the proposed bill, "shall upon arrival within the boundary of such State or Territory," negative the idea of destination and indicate the purpose to have the State law apply before the shipment reaches its destination in the State and at any time after it passes the boundary limits. Much was said by both—

Mr. ALEXANDER. Please state when the end of the quotation comes

hereafter so we can tell what you are quoting and what is your own language.

Mr. HOUGH. That quotation ended after the word "territory." In fact, both of them did.

Much was said about what any State or any prohibition community would do if such a law was passed, but I desire to state in this connection that the proposed legislation must be judged by everything it is possible to do under it, by it, or through it, and not by what probably will be done.

The gentlemen declared that it was not the purpose of this bill or of anybody to have State laws operate extraterritorially, but in making such statements two views were clearly overlooked. The first is that if Congress undertakes to permit a State law to operate upon an interstate shipment before the transit is completed it necessarily has the effect of attempting to give the State laws extraterritorial effect. Such was emphatically declared to be so by the Supreme Court in the Bowman case. But with respect to the proposed legislation we are not to be left in doubt. The difference between the Wilson law and the first provisions of the proposed measure are radical and vital; but there is a section which the remarks of my brother lead me to believe he has never read. It is as follows:

SEC. 2. That all corporations and persons engaged in interstate commerce shall, as to any shipment or transportation of fermented, distilled, or other intoxicating liquors or liquids, be subject to all laws and police regulations with reference to such liquors or liquids, or the shipment or transportation thereof of the State in which the place of destination is situated, and shall not be exempt therefrom by reason of such liquors or liquids being introduced therein in original packages or otherwise; but nothing in this act shall be construed to authorize a State to control or in anywise interfere with the transporting of any liquors intended for shipment entirely through such a State and not intended for delivery therein.

We can imagine any number of laws of a most sweeping character which might be enacted under this permission, but it is only necessary to refer to an existing law in Iowa to demonstrate its viciousness. I refer to the law which forbids a common carrier from transporting any intoxicating liquors without first having received a certificate, and, mark you, it says *first* having received a certificate.

Something was said at the last hearing about the possibility of this certificate being obtained by the common carrier after it comes into the State of Iowa, but this second provision proposes to reach outside of the State and control its action where it starts in any other State of the Union.

Mr. ALEXANDER. May I interrupt you there?

Mr. HOUGH. Certainly.

Mr. ALEXANDER. Are you familiar with the Iowa law?

Mr. HOUGH. Yes, sir; I quoted it in my last argument, and it is printed—that is, the Iowa law on this point. I do not know that I am familiar with all the provisions of all the laws of Iowa.

Mr. ALEXANDER. There seems to be some misapprehension in regard to what the Iowa law suggests in regard to liquor imported to a bona fide consignee. What is your opinion?

Mr. HOUGH. I think you mean a bona fide consumer.

Mr. ALEXANDER. A bona fide consumer.

Mr. HOUGH. The law makes no distinction between a consumer and the man who is going to receive for the purpose of selling. The Iowa law—

Mr. ALEXANDER. Now, let me ask you this. Supposing you are a

citizen of Iowa and send to Louisville for a keg of whisky for your own consumption in your own household. Under the Iowa law could that be stopped at the borders of the State?

Mr. HOUGH. If you should pass this bill it would be an attempt to give the State of Iowa permission to stop it at the borders of the State, because—

Mr. ALEXANDER. That is not the point. With the law as it exists at present, would it stop it there?

Mr. HOUGH. It would if it had validity, but the Supreme Court of the United States in the Rhodes case said that it could not have that effect.

The CHAIRMAN. What you mean is that when Congress has acted then the Iowa law becomes operative?

Mr. HOUGH. Exactly. If this would be held to be a constitutional enactment then the State law would become operative and the effect would be to give the State the power to stop an interstate shipment at the boundary, because the Iowa law draws no distinction in requiring the certificate which is required to accompany the shipment between a shipment that is going to be brought there for a man to sell and a shipment that is going to be brought there for a man to consume at his house.

Mr. BRANTLEY. The question is, under the law of Iowa as it exists to-day, if this pending measure is passed and is constitutional, would it have the effect suggested by Mr. Alexander?

Mr. HOUGH. That is what I say, it would have that effect; it would give them permission to stop the shipment that was unaccompanied by a certificate at any time after it had reached the boundary and prior to delivery to the consignee, and the suggestion of Judge Smith that they might have difficulty in catching it is no answer to that proposition, because it does not go to the principle, and laws are not to be passed on the theory that you may not be able to enforce them, but they are to be passed on the theory that they can and will be enforced.

Mr. BRANTLEY. I have not read the decision of the Supreme Court which decided the South Carolina dispensary case—

Mr. HOUGH. The case of *Vance v. Vandercook*—

Mr. BRANTLEY. But I have been told the Supreme Court says that no State can pass a law which will prohibit an individual from importing intoxicating liquors for his own use. Is that a fact?

Mr. HOUGH. Yes, sir; I quoted that case in my last argument here; and they furthermore said that that is a right of the individual which is protected by the Constitution, a right existing prior to the Constitution and protected by the Constitution, and can not be whittled away or legislated away in any way whatever.

Mr. BRANTLEY. Is it not predicated upon the interstate commerce clause of the Constitution?

Mr. HOUGH. They said it was that clause of the Constitution that protected that right.

Mr. BRANTLEY. Would not that protection apply as much to the man that wanted to consume as the man who wanted to sell, the man who wanted to import?

Mr. HOUGH. Congress has the right to regulate an interstate commerce shipment. Now, there is a difference between interstate commerce and an interstate shipment, and I refer to a decision in Iowa which explains all that is covered by interstate commerce, which is more than what is covered by the term "an interstate shipment."

Congress has said that the incidental right of sale can be separated from the right to make an interstate shipment, although the Supreme Court had previously said that the incidental right of sale was a part of interstate commerce; and while Mr. Reed, of Iowa, stated that they were surprised, in view of the former decision of the Supreme Court in the case of *Brown v. Houston* (114 U. S.), I say they need not be surprised, if they will read that case a little closer, because it was forecast in that decision that there was a distinction between that kind of a case, which was a case where coal had gone in involving no question of original package, and a case of where shipment can be made in what can be clearly considered an original package, and they used the words "original package" in the case, and indicated that if it came from a foreign nation it would be protected in that form until after sale.

In the *Vance v. Vandercook* case they were discussing "discrimination" as well as the interstate-commerce clause of the Federal Constitution. The point was made that the dispensary law of South Carolina was invalid, because it restricted the right of individuals from the different States to ship into the States.

Mr. ALEXANDER. The point there was that they first had to go to the dispensary officers.

Mr. HOUGH. Yes; they had to go to the dispensary officers and get a certificate of purity.

Mr. ALEXANDER. And the nonresident had to go to the officer of the State before he could ship it in. That was in *Vance against Vandercook*?

Mr. HOUGH. Now, if there had not been this right of the individual to ship in for his own use the dispensary law of South Carolina would have been declared unconstitutional as being discrimination, not particularly as violating the interstate commerce clause, but as being discrimination against the citizens and the products of citizens of other States.

Mr. HENRY, of Texas. That is, class legislation?

Mr. HOUGH. Yes; and the Supreme Court says that since that right exists an individual can order his liquors from any State in the Union and that right can not be hampered in any way, and the court says in the opinion that it will refer to the question of restriction later. Now, then, when they come to it later they find that a citizen, according to the laws of South Carolina, had to get a certificate of purity; he had to get a sample of his proposed shipment—

Mr. ALEXANDER. From the State chemist?

Mr. HOUGH. He had to submit it to the State chemist and get a certificate of purity. Now, the Supreme Court declared that part of the South Carolina dispensary law unconstitutional, because they said that right could not be hindered in any way whatever or impeded.

Mr. ALEXANDER. Now, Mr. Hough, when Judge Smith was speaking I asked him this question: "Under this bill would not liquors be stopped at the border of Iowa?"

And he replied: "They certainly would not and could not be unless they were imported for sale, because there is no law of Iowa and never has been any law of Iowa which made liquors contraband."

Mr. HOUGH. He is mistaken. The law of Iowa to which I referred this committee provides that before any common carrier—he probably overlooked this law, which applies to common carriers as distinguished from laws which might apply to the individual—that law says that no

common carrier can transport in the State any intoxicating liquors unless he first receives a certificate, which must accompany the bill of lading, to the effect that the consignee is entitled to sell. The law of Iowa does not say anything about the right to consume at all; it makes no such distinction. In every case of a shipment of intoxicating liquors there must be that certificate that the consignee has the right to sell. And if a man is receiving for his own use and does not intend to sell he could not get a certificate.

Therefore the shipment could not be accompanied by a certificate and therefore it could not only be seized under the laws of Iowa, if this bill should be passed, but it could be seized at any time before delivery to the consignee, even before it reached the town or city of its destination—any minute after it passes the boundary of the limits of the State—because it has not accompanying it that certificate which it is impossible for the man to get, because he does not intend to sell it. So if you could physically carry out the law you could stop that shipment, and Judge Smith, in my opinion, did not answer your question correctly.

Mr. SMITH, of Kentucky. Will you embrace that provision of the Iowa law in your remarks?

Mr. HOUGH. I am sure it was in my last remarks, but I can not find it.

The CHAIRMAN. Your remarks were printed, and if you included it in your remarks you will probably find it there.

Mr. ALEXANDER. Just see if it is in your last remarks.

Mr. HOUGH (after examination of printed document). It is; here it is.

Mr. ALEXANDER. What is the page?

Mr. HOUGH. Page 65. I will read the law, and you will note that it does not distinguish between the consignee who is going to receive for his own use and a consignee who is going to receive for sale; but, for the reason which I am going to give you a little later, that makes no difference with respect to the proposed legislation, because until Congress passes a law prohibiting a shipment of intoxicating liquors from every State in the Union a common carrier is bound to deliver to the consignee without reference to what his purpose is in receiving, and the shipper in every State in the Union is entitled to have that shipment delivered under the laws of his own State and the Constitution of the United States in the absence of such prohibition by Congress against the shipment from every State. I say I will get to that later. I will read this law now. [Reading:]

If any express company, railway company, or any agent or person in the employ of any express company, or of any common carrier, or any person in the employ of any common carrier, or if any other person, shall transport or convey between points, or from one place to another within this State, for any other person or persons or corporation any intoxicating liquors, without having first been furnished with a certificate from and under the seal of the county auditor of the county to which said liquor is to be transported or is consigned for transportation, or within which it is to be conveyed from place to place, certifying that the consignee or person to whom said liquor is to be transported, conveyed, or delivered is authorized to sell such intoxicating liquors in such county, such company, corporation, or person so offending, and each of them, and any agent of said company, corporation, or person so offending, shall, upon conviction thereof, be fined in the sum of \$100 for each offense.

And so forth. I need not read more. The offense is deemed to be complete and shall be held to have been committed in any county of the State through or to which said intoxicating liquors are transported.

It can be prosecuted in any county of the State through which the shipment has gone.

Mr. LITTLE. That seems to meet your contention?

Mr. HOUGH. It meets it fully; and I say in determining or discussing the legal effect of any law you must assume everything that is possible to be done by State legislation, but so far as Iowa is concerned we do not have to assume—we simply take the law as it exists.

Mr. ALEXANDER. Now, Mr. Hough, would these words which I will read put it within the case of *Vance against Vandercook*?

without having first been furnished with a certificate from and under the seal of the county auditor of the county.

Mr. HOUGH. If you require a man to get a certificate at all, even where he is going to receive it for his own use, it would be declared unconstitutional according to the rule in *Vance v. Vandercook*. You can place no restriction on that right at all, if I understand your question.

Mr. GILLETT, of California. Because they might refuse a certificate?

Mr. HOUGH. Yes; and there are any number of other reasons.

Mr. ALEXANDER. In *Vance v. Vandercook* the court said the South Carolina act compelled a resident of the State who desired to order liquors for his own use to first communicate his purpose to the State chemist, and it deprived a nonresident of the right to ship into a State unless authority was previously obtained from the officers of the State, and that these conditions are wholly incompatible with the existence of the right which the statute itself acknowledges. That was in the case of *Vance v. Vandercook*.

Mr. HOUGH. Yes, sir.

Mr. ALEXANDER. Now, with your study of the question, in your opinion would these words in the Iowa statute, "Without having first been furnished with a certificate from and under the seal of the county auditor of the county," put it on all fours with the statute in South Carolina?

Mr. HOUGH. As it is it is more objectionable than that provision in the South Carolina dispensary law, but if the law of Iowa attempts to make the distinction between the right to import for sale and the right to import for use, and with that distinction in the Iowa law requiring any kind of a certificate at all, it would be on all fours with the case in the decision referred to.

But for another reason, I want to call the attention of the committee to the fact that they can not distinguish, they can not apply any law to a shipment before that shipment reaches the consignee without interfering with the rights of every other citizen in the United States outside of that State, without reference to whether that shipment comes in for use or for sale, and a law of the State of Iowa which attempted to permit it to come in and be delivered to the consignee, provided it was going to come for his own use, but which would prohibit it, provided it was going to come for sale, and which should undertake to submit that question of fact to any jury in the State, would be declared to be unconstitutional, as much so as the proposed bill; because it can not be interfered with on any condition until Congress undertakes to prohibit the shipment from a sister State. I will explain that when I get a little further on.

Mr. ALEXANDER. I would like to hear that last sentence again.

Mr. HOUGH. No law of the State of Iowa would be constitutional,

and Congress could not by any legislation give effect to a State law which would have the effect of interfering in any way with an interstate shipment prior to its delivery to the consignee, even if it went for the purpose of sale, until Congress should pass a law prohibiting such shipments from every State.

The CHAIRMAN. Now, to get at the matter practically, the very things that Judge Smith complains of could be prohibited under the laws of Iowa since the passage of the Wilson bill?

Mr. HOUGH. There is no question about it.

The CHAIRMAN. There is no legal embarrassment?

Mr. HOUGH. Not the slightest.

The CHAIRMAN. It is not the assistance of Congress that they need—

Mr. HOUGH. They ask Congress to help them because of the failure of the State agencies to enforce their laws.

The CHAIRMAN. I agree with you on that proposition.

Mr. HOUGH. And the only benefit to prohibition legislation in the States which could possibly come from any legislation of this kind would be analogous to the benefit which a community would derive by cutting off the head of a man to keep him from stealing.

The CHAIRMAN. The Supreme Court of the United States is unanimous on this proposition: That it is not within the power of Congress to prohibit the transportation of liquor into a State when it is ordered by a bona fide consignee.

The CHAIRMAN. No; it does not make any difference in my judgment about that.

Mr. HOUGH. It does not make any difference?

The CHAIRMAN. If he sends for it.

Mr. HOUGH. If he sends for it?

The CHAIRMAN. If he sends for it, the Supreme Court says unanimously: "You can not prohibit it, and it is not within the power of Congress to stop it." Do you agree with me on that proposition?

Mr. HOUGH. Unless you pass a law—and I do not want to express any legal opinion on that proposition—unless you pass a law which says in express terms that there shall be no shipments from any State. If you leave that open, then the Supreme Court has said you can not pass a law which will have the effect of giving the State the right to interfere with any interstate shipment prior to delivery.

The CHAIRMAN. The difference between your mind and mine on this question is this: I understand, from your argument, you say that it is within the power of a man in Kentucky to ship it to Iowa indifferently, without any reference as to whether there is a bona fide consignee there or not.

Mr. HOUGH. No, sir; I do not say that.

The CHAIRMAN. Then I misunderstood you.

Mr. HOUGH. I say that if the man in Iowa received the liquor in advance of a bona fide order sent to the place of business in Kentucky, that that is a sale in Iowa and not a sale in Kentucky.

The CHAIRMAN. And absolutely forbidden by the laws of Iowa, and all they have to do is to enforce the law they have there.

Mr. HOUGH. All they have to do is to enforce their law. Now, if a man in Kentucky receives an order in Kentucky for a shipment, he can send that order under the present state of the law—that is, the Federal law—he can fill that order and send that shipment to Iowa,

and you can not by this bill, or any bill like it, authorize Iowa to interfere with that shipment before it reaches the consignee.

When it reaches the consignee, under the law of Iowa, he is then forbidden to sell it, and it is the business of the officials in Iowa to step in then and enforce their prohibition regulation against selling, and they have ample authority to do that under the construction given the Wilson Act by the Supreme Court in the Rhodes case.

Mr. GILLETT, of California. Then your position is, Mr. Hough, that in the absence of an act of Congress prohibiting a transportation of intoxicating liquors—a general law—that there is a perfect right to ship them, where a contract is entered into, from one State to another?

Mr. HOUGH. More than that. You can sue the railroad company if it fails to deliver.

Mr. GILLETT, of California. Yes.

Mr. HOUGH. And you are enforcing a right, not by the laws of Iowa (because that right is not based on the law of the forum, but the law of the place where the contract is made), but you are enforcing that right under the laws of Kentucky or New York and the Constitution of the United States, and the railroad company then is in an embarrassing position.

The CHAIRMAN. And the law to-day is exactly the same as it was when the Wilson bill was passed?

Mr. HOUGH. Precisely.

The CHAIRMAN. There has been no change?

Mr. HOUGH. You mean the Federal law?

The CHAIRMAN. Yes.

Mr. HOUGH. Precisely; and they are to-day in precisely the same position with reference to the right to enforce State regulations as they were prior to the original-package decision; prior to the time when that distinction was drawn.

The CHAIRMAN. There has been no decision of the Supreme Court of the United States that embarrasses the States in the least?

Mr. HOUGH. Not in the slightest. In other words, I think that the Supreme Court stretched a point to give them the benefit they enjoy to-day; but that is not material to the present discussion.

The CHAIRMAN. To repeat, the Supreme Court of the United States are unanimous on this point: That a person living in Iowa, in an absolute prohibition State, where the sale and manufacture of liquor is strictly forbidden, can not be prevented from sending into another State and having shipped to him liquor as long as he gives the order?

Mr. HOUGH. As long as he sends in the order.

The CHAIRMAN. He derives that right from the Constitution, and that right can not be impaired?

Mr. HOUGH. Precisely.

Mr. BRANTLEY. And from the interstate-commerce clause.

The CHAIRMAN. And from the interstate commerce clause.

Mr. HOUGH. Both from that clause and from the other clause which prohibits discrimination against the citizens of the various States.

The CHAIRMAN. Then what is there to legislate on when the advocates of the bill say they do not intend to prevent a man from ordering liquor on his own account?

Mr. HOUGH. Absolutely nothing to legislate for. As I said a while ago, referring to what was said when the Wilson measure was under discussion, they never intended to go any further than to cut out the

incidental right of sale, and when the gentlemen say, as has been said every day that I have been here, that the sole purpose of this proposed law is to accomplish only the very thing which was intended to be accomplished by the Wilson Law, they are making statements that are not borne out by the facts.

When they say that the Supreme Court in the Rhodes *v.* Iowa case has given a restricted meaning to the Wilson law, I say they are making statements which are not borne out by the facts, and if the construction which was given the Wilson law by the Supreme Court in the Rhodes case accomplishes precisely what every man in the House and Senate said was their purpose in accomplishing, when they passed the Wilson law, there is absolutely nothing to legislate upon and no necessity for any further legislation, if the gentlemen do not want to interfere with interstate shipments, and they say they do not.

Mr. ALEXANDER. I want to put this in another way. If this bill should become a law would it prevent any bona fide shipment not intended for sale, but which is transported solely for the purpose of actual delivery to the original consignee for his personal use and consumption?

Mr. HOUGH. Certainly it would, provided they could catch it; but then you must always assume that you can enforce laws.

Mr. ALEXANDER. What was your answer?

Mr. HOUGH. Certainly it would, because it would give them the right to apply a State law to an interstate shipment at any time after it reaches the boundary of the State and before delivery to the consignee.

Mr. GILLETT, of California. If it got to the consignee it might be different.

The CHAIRMAN. I do not think we quite agree for the moment. Is this a correct statement of the law? I assume, again, that I am living in an absolutely prohibition State, where the manufacture and sale of liquor is absolutely prohibited. Now, if I want to send to Kentucky and have liquor shipped to me, if I order it myself, the question of bona fides does not arise, but the State can not prevent that shipment to me?

Mr. HOUGH. The State of Iowa or that community has no right—

The CHAIRMAN. Or any State?

Mr. HOUGH. Has no right—

The CHAIRMAN. But can a resident of the State of Kentucky or any person in Kentucky ship indifferently to the State of Iowa anticipating a customer?

Mr. HOUGH. That constitutes a sale at the place of destination, as has been decided by the Internal Revenue Bureau as well as the courts, and could be prohibited or punished by the State laws.

The CHAIRMAN. And it has been decided a number of times by the Supreme Court of the United States?

Mr. HOUGH. Yes.

The CHAIRMAN. When they complain there that jugs of whisky are shipped into Iowa and sold there in that way all they have to do is to prosecute the parties under the State law?

Mr. HOUGH. There is no question about that.

The CHAIRMAN. And the man that sells that whisky shipped in there in that way is liable and always has been?

Mr. HOUGH. He always has been.

The CHAIRMAN. Then we agree on the law.

Mr. HOUGH. And I think somebody instanced a case of that kind where a number of jugs had been shipped to an express officer in advance of sale.

The CHAIRMAN. Judge Smith did, I think.

Mr. HOUGH. Which shows they can enforce it sometimes.

The CHAIRMAN. In Vance and Vandercook and in Scott *v.* Donald it was decided that they can not ship in advance of a customer and that if they do it constitutes a sale in the State to which the liquor is shipped.

Mr. HOUGH. If it is prohibited in the State then the State laws would apply in that kind of a case.

The CHAIRMAN. And all they have to do is to enforce the law and the jugs of whisky have to disappear.

Mr. HOUGH. Exactly.

The CHAIRMAN. I made that statement to a gentleman on the floor of the House when our friend Judge Smith was making that statement, when this bill was before the House—that all they have to do is to go on and enforce the laws of the State of Iowa.

Mr. HOUGH. That is what I have said all the time. I said that the last time I was here, and I say now, that every case and every instance which has been cited by every person before this committee as indicating practical operations of dealers in prohibition sections have been cases with which existing laws are amply able to cope if properly enforced.

And if it is true that the supreme court of Iowa has decided the flat question, as was stated by Judge Smith, that a C. O. D. shipment constitutes a sale at the point of delivery, then Iowa at least is in even a stronger position than any of the other States to cope with the evils of which they complain than if that court had not attempted to overrule a principle of law merchant which is supposed to have been established so long "whereof the memory of man runneth not to the contrary."

Mr. ALEXANDER. May I interrupt you with a question?

Mr. HOUGH. Certainly.

Mr. ALEXANDER. It is a much disputed question among many members of the committee, and I want to get your idea about this: I asked you a moment ago whether, if this bill became a law, it would prevent any bona fide shipment not intended for sale, but which is transported solely for the purpose of actual delivery to the original consignee for his personal use and consumption, and your answer was that it would.

Mr. HOUGH. That is my answer.

Mr. ALEXANDER. Now, I want to ask you further whether if the bill contained that proviso it would be constitutional?

Mr. HOUGH. A proviso—you mean that they could stop it if intended for sale and could not stop it if it was intended for use?

Mr. ALEXANDER. Yes.

Mr. HOUGH. It would not be constitutional even then, for a reason which I will give you later on, because you can not interject into the case the question of fact as to what is the purpose; and until Congress prohibits absolutely the shipment from every State there exists the right of every shipper in the United States to have his shipments reach the consignee, no matter where he is or what it may be his purpose to do with the shipment after it reaches him.

Mr. GILLET, of California. And no matter what the use is to be?

Mr. HOUGH. No matter what the use is to be.

Mr. HENRY, of Texas. You take the broad ground that Congress can not permit a State to interfere with interstate commerce?

Mr. HOUGH. Exactly; that is what it resolves itself into.

Mr. HENRY. Can not delegate its power?

Mr. HOUGH. Can not delegate its power.

Mr. BRANTLEY. Referring to this question asked you by Mr. Alexander, your position is that under the law of the State of Iowa, as it now exists, if we pass this bill the purpose and effect of this bill now pending would be that the State of Iowa would prohibit or could prohibit under the present law a man from importing liquor for his own personal use?

Mr. HOUGH, Yes, sir; and more—

Mr. BRANTLEY. One minute. But you contend that even although we passed it it would be an unconstitutional provision?

Mr. HOUGH. Clearly. This bill would be unconstitutional for these reasons—

Mr. BRANTLEY. And even although we amend this bill by eliminating the man who imports for his own personal use, so as not to make him subject to the State law, that even then it would be unconstitutional?

Mr. HOUGH. Clearly so.

The CHAIRMAN. Why?

Mr. HOUGH. Because you can not interfere with any shipment before it reaches the consignee without trenching upon the rights of every other citizen in every other State than the destination of that shipment.

The CHAIRMAN. Now, your answer shows that we do not understand each other—

Mr. HOUGH. Of course, you understand that a great many of these questions raise questions which I have covered in this address. I am prepared to cover all these in the remarks I have laid out, and to a certain extent it flushes me to be asked these questions before I get to them in the line of argument I had laid out. I mean you get at these points before they are brought out in their strongest connection—but I do not object to that.

Mr. ALEXANDER. This is a good time to bring them out.

Mr. HOUGH. I do not object.

The CHAIRMAN. This raises this question: If I am in Iowa under the conditions heretofore stated and I give an order to any person outside of Iowa to ship me liquor, no one can question the purpose I have, under these decisions of the Supreme Court of the United States?

Mr. HOUGH. That is correct; and no one can question as to whether I have ordered that liquor to sell it or to use it.

The CHAIRMAN. But under the decision of the Supreme Court of the United States to-day no man in any State outside of Iowa can anticipate a sale and make a shipment, and if he does it—

Mr. HOUGH. If he does it that constitutes a sale at the place of delivery, and if there is a law at the place of delivery which forbids or punishes sales of intoxicating liquors it would apply to that case.

Mr. GILLET, of California. Then your position is this: That the laws of Iowa that would prevent a contract being carried out if entered into in Kentucky would have extraterritorial force?

Mr. HOUGH. The court said so in the Bowman case.

Mr. GILLETT, of California. And it would be unconstitutional.

Mr. HOUGH. Yes, sir; the Supreme Court said it in the Bowman case particularly. Therefore, I say that if you should even try to amend this bill so as to discriminate or enable the State to discriminate between a shipment which it may be alleged is intended for sale and a shipment which they may think is for private consumption, it would still be unconstitutional if it interfered in any way with that shipment prior to the time when it reaches the consignee, for reasons and authorities that I cite later.

Mr. ALEXANDER. Then you think this bill is unconstitutional anyhow?

Mr. HOUGH. Clearly.

The CHAIRMAN. If you have no objection I will ask you to suspend now, because under our rules we take a recess at this hour.

Thereupon, at 12.30, the committee took a recess until 2 o'clock p. m.

AFTERNOON SESSION.

The committee met at 2 o'clock p. m., Hon. John J. Jenkins in the chair.

STATEMENT OF MR. W. M. HOUGH—Continued.

Just before recess I had reached that point of my statement where I referred to a remark of Judge Smith, of Iowa, in reference to a decision in that State on the C. O. D. question, and I stated that if it were true that the supreme court of Iowa had decided the flat question that a C. O. D. shipment constituted a sale at the point of delivery, they were in a better condition to cope with the evils complained of than any other State. I am inclined, however, to doubt that the supreme court of Iowa has decided the flat question in any such way, and I am inclined to believe that there was some other element in the case than the mere C. O. D. proposition which conducted to the conclusion reached, if, as I say, any such conclusion was reached.

I was not able to find any decision of the supreme court of Iowa which covered that proposition, but in the latest volume of reported cases—the latest volume of the Iowa reports—the 117th Iowa, I find the following case, *State v. Hanaphy*, wherein the court decides that where a traveling salesman whose principal was engaged in the sale of intoxicating liquors in the State of Illinois, solicited and accepted an order for liquor in Iowa, which order was sent to the house in Illinois and there accepted, and the goods sent C. O. D. from the principal to the buyer, the transaction constituted interstate commerce, and the salesman was not liable to prosecution under an act prohibiting the soliciting and filling of orders.

That is inconsistent with the proposition that a C. O. D. shipment constituted a sale at the point of delivery. It may be that the case Judge Smith has in mind was a case where a shipment was sent C. O. D. and the party to whom it was consigned did not call for it, and the bill of lading was transferred to somebody else, and the other person called and took it. I say it may have been that kind of a case, and if it was that kind of a case, then such facts constituted a sale at the point of delivery, irrespective of the fact that it may have been shipped C. O. D. The supreme court of Iowa, in the Hanaphy case, says some further

things to which I will refer later on—another proposition which is even more important than this.

It is earnestly and seriously contended that it is not the purpose of this bill to interfere in any way with the rights of an individual, and yet those who assert this willfully or negligently ignore the fact that the distinction drawn by the Supreme Court in the Rhodes case, as to the time when State laws could first apply to interstate shipments for the protection of health and morals, and the enforcement of their police regulations, without amounting to a regulation of interstate commerce by the States, is absolutely necessary to protect that right of the individual to receive for his own use. If you attempt to give the State the right to make a State law apply before delivery, then instead of having that right of the individual guaranteed by the Constitution, as was said by the Supreme Court in the case of *Vance v. Vandercook*, you tell him that that right shall be made subject to State law, which may prevent its ever reaching him.

This would be the necessary consequence of saying that an interstate shipment should be subject to State laws before delivery, and that at any time after it reaches the boundary of the State.

In so far as Iowa is concerned this would be already accomplished by existing laws, because, as I have stated, the requirement of the law of Iowa that a certificate that the consignee has the right to sell must accompany the shipment absolutely excludes the idea of a shipment for private consumption.

From this statement alone it is apparent that an interstate shipment must continue until actual or constructive delivery to the consignee, and so long as no State proposes to prohibit the right of the individual to drink, no legislation is needed which would apply to a shipment before actual or constructive delivery. When it reaches the consignee, however, he has only the right to consume it, but no right to sell it in violation of the State laws.

The distinction which was drawn by the Supreme Court in the Rhodes case between the time when a State law would apply to an interstate shipment without amounting to a regulation by the State of interstate commerce, and the time when its application would amount to a regulation of interstate commerce, is necessary for another reason.

I stated in my former argument that without appreciating the fact the complaint of the proponents of this bill was really against the "law of sales," and I cited authorities to show that when a man in the State of Iowa wrote to a firm in New York or Philadelphia, Illinois or Missouri, where the business of manufacturing or selling intoxicating liquors is permitted, and ordered the same sent to him, that that was a sale at the place where the order was received and accepted, and the fact that it was a sale at such place was not affected in any way by the manner of delivery.

There is a right, however, which grows out of such a transaction which belongs to the seller or shipper, and which continues until actual or constructive delivery to the consignee. This is the right of stoppage in transitu, a right which is recognized and in force under both the common and civil law.

Mr. Parsons, in his work on contracts (6th ed.), says:

If a vendor who has consigned goods to a purchaser at a distance finds that the purchaser is insolvent he may stop the goods at any time before they reach the purchaser. This right is called the right of stoppage in transitu.

The second edition of the American and English Encyclopedia of Law says:

The right of stoppage in transitu is the right of an unpaid seller of merchandise to resume possession thereof after shipment and before actual or constructive delivery to the buyer, or some one claiming under him or for him in some capacity other than that of carrier or middleman, for the purpose of securing himself to the extent of the purchase price remaining unpaid against the insolvency of the buyer existing unknown to the seller at the time of the sale or arising thereafter.

This principle clearly indicates that in contemplation of law the transit continues until delivery, and the fact that the transit was an interstate transit can not limit that fact. In every instance the transit must continue until actual or constructive delivery. This is a right which is enforced, not by virtue of the law of the forum, but by virtue of the law of the place of contract.

If, therefore, you attempt to give the State the right to destroy any shipment before delivery to the consignee, actual or constructive, you are attempting to give the State authority to cut out a right which belongs to the citizens of all the other States under the laws of such other States.

Again, the liability of a common carrier continues until delivery to the consignee, though after reasonable notice to the consignee, the liability of carrier is transferred into the liability of warehouseman. But this is a legal recognition of the proposition that the transit of goods continues until actual or constructive delivery to the consignee, and that includes storage for a reasonable length of time in the warehouse of the carrier at the point of destination, to give notice to the consignee.

In the case of the *Daniel Ball* (10 Wall., 565) the court said:

In this case it is admitted that the steamer was engaged in shipping and transporting down Grand River goods destined and marked for other States than Michigan and in receiving and transporting by the river goods brought from without its limits; but inasmuch as her agency in the transportation was entirely within the limits of the State and she did not run in connection with or in continuation of any line of vessels or railway leading to other States, it is contended that she was engaged entirely in domestic commerce. But this conclusion does not follow. So far as she was employed in transporting goods destined for other States or brought from without the limits of Michigan and destined to places within that State she was engaged in commerce between the States, and however limited that commerce may have been, she was, so far as it went, subject to legislation of Congress. She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one State to another commerce in that commodity between the States has commenced.

And the same rule applies to the shipment until it reaches delivery; even the express wagon that would deliver the goods from the railway station to the consignee is in that respect engaged in interstate commerce.

Mr. BRANTLEY. Will you read that last clause again?

Mr. HOUGH (reading). "She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced."

The point was made in this case that inasmuch as the part played in that commerce by that boat was wholly within the State; therefore it was no part of interstate commerce. The rule laid down by the court,

as I say, applies at the other end of the shipment as well as at the beginning of the shipment. To continue my quotation:

The fact that several different and independent agencies are employed to transport a commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction. To the extent to which each agency acts in that transportation it is subject to the regulation of Congress.

And the doctrine in this case was approved by the Supreme Court in the case of *Norfolk Railroad v. Pennsylvania* (136 U. S., 119).

In the case of *Rhodes v. Iowa* the Supreme Court said:

The fundamental right which the decision in the *Bowman* case held to be protected from the operation of State laws by the Constitution of the United States was the continuity of shipment of goods coming from one State into another from the point of transmission to the point of consignment, and the accomplishment there of the delivery covered by the contract.

That states clearly what the interstate shipment amounts to, where it begins, and where it ends. In the *Bowman* case there was no question of sale in the original package involved. The contract in such case is of course a contract made in another State under whose laws such a contract is valid, and against the enforcement of which the interstate common carrier could not plead a law of Iowa. His contract—that is, the contract of the common carrier—required him to deliver, and it is enforceable by the laws of the State where the shipment starts.

The *Iowa* case, to which I have referred, holds the same thing. In that case, *State v. Hanaphy* (117 Iowa, 115), the supreme court of *Iowa* said:

All these acts—the seeking of the customer by the agent, the soliciting and taking of the order, its transmission to the house in another State, the shipment made, the transportation and delivery to the purchaser in this State—all unite to make up interstate commerce.

Mr. BRANTLEY. In that connection, if it will not interrupt you, was not the law under which *Hanaphy* was prosecuted merely a statute against the sale of liquor, and they undertook to convict him because he solicited orders for a firm that was out of the State? What I wanted to ask you was this: Whether or not in your opinion a State enactment that makes it penal for any person to solicit orders for any person in that State would or would not be constitutional?

Mr. HOUGH. It would be unconstitutional as long as the article is to be regarded as a legitimate article of interstate commerce.

Mr. BRANTLEY. You mean that it would be unconstitutional as applying to—

Mr. HOUGH. To the man who solicits the orders.

Mr. BRANTLEY. For a party outside?

Mr. HOUGH. Yes, sir; for a party outside. It has been so decided in a number of cases and it was recently reaffirmed in the case of *Stockard v. Morgan* (185 U. S., 27), where the Supreme Court says:

All of the cases cited in the opinion of the court deny the right of a State to tax people representing owners of property outside of the State for soliciting orders within it for such owners for property to be shipped to people within the State.

Mr. BRANTLEY. The statute I suggested would apply to people within or out of the State, that it should be unlawful within the State to solicit an order for whisky.

Mr. HOUGH. That, so far as it applied to a person outside of the State, would be an attempt on the part of the State to regulate interstate commerce, because the soliciting, as stated in the Iowa case, is a part of interstate commerce, and the soliciting has been declared to be a part of interstate commerce by the Supreme Court in a half a dozen cases. The State of Texas recently undertook to change the law of sale so as to get around that point; it had been held by the supreme court of Texas that the soliciting was a part—that is, the soliciting for a man outside of the State was a part—of interstate commerce, so they passed a law to the effect that if a man solicited an order in County A and the goods were sent pursuant to the order solicited, that it should be considered a sale made within that county. Last month the supreme court of Texas passed on that question, and they decided that it constituted a sale at the place of shipment and not at the place of delivery. The court says:

It is insisted that although this may have been the law prior to the act of the 27th legislature (p. 262), the effect of that enactment was to change the rule. We reply that it is not competent for the legislature to define a sale and fix its locus regardless of the known rules of law which authorize parties to make their own contracts, making the place of the sale depend on the place where the property is transferred and title passes. Much less is it competent for the legislature to reverse the decisions of the courts upon questions of this character. While that body is supreme in the exercise of its functions, it can no more fix the place of sale of liquor as between contracting parties in contravention of the rules of law than it can determine the place of a sale of any other commodity or than it can define what intoxicating liquors are. If it can do the one it can do the other, and, as its whim or caprice might suggest, it could define away intoxicating liquors altogether.

Mr. BRANTLEY. Can I ask you this question, then? Is there any way by which a prohibition State can prohibit the business of soliciting orders for the sale of whisky in that State?

Mr. HOUGH. Absolutely none.

Mr. BRANTLEY. It is a part of interstate commerce?

Mr. HOUGH. It is a part of interstate commerce, and until Congress passes a law excluding it from interstate commerce it is protected in that respect as well as in all other respects.

Now, from these different points of view it is apparent that when an interstate shipment has commenced it continues until the shipment reaches the consignee, and this must necessarily be so to sustain the proper relations of all parties under the law.

In determining the character of a statute we are not to be guided by its framing.

As was said by the Supreme Court in the case of *Reed v. Colorado* (187 U. S., 137):

Certain principles are well settled by the former decisions of this court; one is that the purpose of a statute, in whatever language it may be framed, must be determined by its natural and reasonable effect.

Another is that a State may not by its police regulations, whatever their object, unnecessarily burden foreign or interstate commerce.

Again, the acknowledged police powers of a State can not legitimately be exerted so as to defeat or impair a right secured by the national Constitution, any more than to defeat or impair a statute passed by Congress in pursuance of the powers granted to it.

A State law which prohibits or regulates the sale of intoxicating liquors within the State, or which might even prohibit or attempt to prohibit the drinking of such liquors within the State, would be a police regulation; but a State law which would have the effect of interfering in any way with delivery to the consignee of a shipment

from a sister State would not be a police regulation, but a regulation of interstate commerce.

Mr. HENRY. Is that the decision or your argument?

Mr. HOUGH. That is my argument. I state this as the conclusion that I draw from all the decisions, that it would be a regulation of interstate commerce unless it was a legitimate inspection measure, and any Federal legislation which attempts to give to the States the right to apply their laws other than legitimate inspection measures to such a shipment prior to such delivery would be attempting to give the States the right to regulate interstate commerce, and that is exactly what this bill attempts to do.

It was furthermore contended that there was no difference between the proposed legislation and an act of Congress which adopts State procedure for Federal courts in such State in certain cases. This argument, I think, was made by Judge Smith, and the gentleman's reputation as a lawyer is all that entitles this suggestion to serious consideration; for I apprehend that every lawyer present has felt the distinction, even if it has not expressed itself in words in his mind. A fair statement of it would be this, An act of Congress adopting a State procedure is not a delegation of power, because the act is complete in itself and is not executed by any State agency, whereas an act of Congress purporting to regulate interstate commerce, which requires some action to be done by State agency to determine what such regulation is, is a delegation of the power to the State.

If the premises of Judge Smith were correct in reference to his statement about procedure in Federal courts, it would not have been an adoption of such procedure by Congress, but it would have amounted to a delegation of power to the States to provide or establish such procedure for the Federal courts—a thing which no State has authority to do under its own constitution. His premise, however, was incorrect, because no act of Congress that I am aware of says that the practice in Federal courts shall be governed or controlled by the practice established by the legislatures of the States, but it says that the practice shall conform as nearly as may be in certain cases to the practice in similar cases in State courts. This amounts neither to a delegation of authority nor adoption, so far as the Federal action is concerned, but is a direction to the tribunals which Congress has established requiring them to make their rules conform to certain conditions.

Of course an act of Congress could adopt an act of the legislature of any State, provided it was something which Congress could do under its enumerated powers, and I apprehend that the proper distinction between a case of adoption and one of delegation is that in the first case the act is complete in itself and does not require the activities of the State to give it effect, whereas in the other case the activities of the State agencies are called into requisition in order to determine exactly what shall be the purpose or effect and limitation of the act of Congress.

In referring to the construction given to the Wilson Act by the supreme court of Iowa—and that is what is sought to be accomplished by this proposed bill—the Supreme Court of the United States, in the Rhodes case, said :

But to uphold the meaning of the word "arrival," which is necessary to support the State law, as construed below, forces the conclusion that the act of Congress in question authorized State laws to forbid the bringing into the State at all.

And the construction contended for by the State court in that case is exactly what is sought to be accomplished by the proposed legislation. In respect to that the Supreme Court has said that it would amount to authorizing State laws to forbid the bringing into the State at all. And again, in the same case, the Supreme Court of the United States has said:

We think that interpreting the statute by the light of all its provisions it was not intended to and did not cause the power of the State to attach to an interstate-commerce shipment whilst the merchandise was in transit under such shipment and until its arrival at the point of destination and delivery there to the consignee, and of course this conclusion renders it entirely unnecessary to consider whether if the act of Congress had submitted the right to make interstate-commerce shipments subject to State control it would be repugnant to the Constitution.

Thus conceding that if it had had to be construed as applying before delivery, that is exactly what it would have amounted to, and that it would have been repugnant to the Constitution goes without saying; for, as I said before, we do not have to be told whether it will be repugnant to the Constitution for you to delegate authority.

From these two paragraphs it seems to me to be perfectly clear that that court holds the opinion that an act of Congress which attempts to give the State the right to interrupt in any way an interstate shipment before arrival at its destination and delivery to the consignee, actual or constructive, would be submitting the right to a State to regulate an interstate shipment; and what is that, I ask, but delegation?

It seems to me that the trouble with the advocates of this measure is that they have never examined the question except from one standpoint. If they would examine it from all points of a circle around it they must see the fallacies of their position.

The right of a resident of Iowa, for illustration, to receive an interstate shipment is interminably interwoven with the right of a citizen of any other State to have his shipment to Iowa delivered to the consignee.

Until Congress shall prohibit a shipment from every State this right is guaranteed by the Constitution as well as the laws of the State where the shipper resides, and can be enforced against the common carrier, who is thus put "between the devil and the deep sea;" for if he failed to carry out his contract to deliver in accordance with the law of the place where the shipment starts he can be mulcted in damages, and if he brings it to Iowa in compliance with that contract without first having received the certificate, which it is impossible for him to get, he is fined and imprisoned. Such would be the effect of the proposed legislation.

How, then, can anyone say that you are not attempting to give extraterritorial effect to the laws of Iowa, or any other State to which it may be applied? How, then, can anyone say that you are not attempting to delegate power to a State to regulate and control an interstate shipment?

I am unable to find the least excuse or semblance of justification, either in law or in fact, for the proposed legislation. As I have explained, it is not needed; and it seems to me it violates our sense of propriety and our sense of justice and it violates the Constitution.

STATEMENT OF MR. ROBERT CRAIN, GENERAL COUNSEL OF THE UNITED STATES BREWERS' ASSOCIATION.

Mr. Chairman and gentlemen of the committee, it is difficult to add anything to the very full and learned argument which has been made by our friend, Judge Hough, and, as I have had the opportunity to print in the report of the hearings before the committee some of the reasons against the constitutionality of this bill, I will offer only a few suggestions to the committee at this hearing. I had the pleasure of listening to the able argument of Judge Smith, of Iowa, at the last hearing of the committee. In one part of the speech of Judge Smith, in answer to a question by Mr. Gillett, the judge took occasion to say:

You are talking about the constitutionality of this law. We will take care of ourselves if you have not any law that prevents our taking care of ourselves. We are not asking you to take care of us; we are asking you not to interfere with us.

If that is the position of our friends who are asking for the passage of this law, I should take it that the committee would have little difficulty in granting the request as made by Judge Smith. He makes the suggestion that if the committee, and afterwards Congress, will leave himself and his clients and his friends alone, that at least in the State of Iowa they will take care of the prohibition question. As I had understood the purpose of this bill, it was, in direct opposition to the statement as made by Judge Smith, that the people of Iowa, according to the views of our friends on the other side, having found it impossible to take care of themselves, had sought the intervention of Congress and asked the aid of Congress in taking care of their laws and the violations of their laws.

Now, gentlemen, it seems to me that it is unimportant in the discussion of this question whether or not the goods shipped from one of the States of the Union into a prohibition State be shipped there either for the purpose of consumption or for the purposes of sale. If the decision of the Supreme Court in the Rhodes case means anything it means that commerce continues until the goods reach the hands of the purchaser, the consignee. After it has reached the hands of the purchaser it is then for the State law to take hold of those goods, and if those goods are to be sold in violation of any statute of the State then that violation of statute is the thing that the State must look after. If the goods shipped from New York to Iowa to some man who would desire to purchase them for sale could be seized by the officials of the State of Iowa before they reached the hands of the man who had made the purchase, then the ~~interstate~~ commerce would be destroyed by the officer of the State of Iowa, because the officer of the State of Iowa would be taking hold of those goods while they were still in transitu, and under the decision of the Supreme Court it certainly would be in violation of the Constitution.

There seemed to be some doubt, at this first hearing of this committee, as to whether or not the power of Congress over interstate commerce was absolute; as to how far that power of Congress extended, and as to whether or not there could be some question as to the delegation by Congress to the several States of the regulation of the interstate shipment. We suggested from the very first, when this bill was before the Senate committee, that there could be no question about that, because since the decision in *Gibbons v. Ogden* it had been

acknowledged by all lawyers, as we saw the question, that the power of Congress over interstate commerce was an exclusive and an absolute power. When the opinion in the Northern Securities case was handed down, and you gentlemen of the committee I have no doubt have read it, Mr. Justice Harlan in delivering the opinion of the court, in discussing this question, said—

if, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States; that a sound construction of the Constitution allows to Congress a large discretion "with respect to the means by which the powers it confers are to be carried into execution, which enable that body to perform the high duties assigned to it in the manner most beneficial to the people."

Then he goes on to cite the case of *McCulloch v. Maryland*, and says:

The Government is for all; its powers are delegated by all; it represents all, and acts for all, and is supreme within its sphere of action.

Meaning that Congress had that right.

If we are to concede, and it seems to be settled law by all of the decisions of the Supreme Court, that an interstate shipment continues until it reaches the hands of the consignee, and if we are also to take as settled law that the States can not seize those goods until they reach the hands of the consignee, if you pass this bill and give to the several States the right to take hold of the goods before they get to the hands of the consignee, you delegate to the several States of the Union the power over interstate commerce, and from the decision of *Gibbons v. Ogden* down to this decision in the Northern Securities case, all the decisions are in unison to the effect that that can not be done.

If all other questions are brushed aside, if you brush aside the question which my brother, Judge Hough, has discussed so ably as to whether the sale is made in the State where the purchase is made or whether the sale is to be made in the State where the delivery is made, brushing all those questions aside, unless you are to override the decisions of the Supreme Court that the power of Congress is an absolute and exclusive power, that it can not be delegated, and that the several States can not take hold of these goods until they reach the hands of the consignee, you immediately place in the hands of the States the control over interstate commerce when these goods have reached the borders of the several States. Can any other construction be placed on this bill?

If you pass this bill its vitality, or efficiency, or force becomes effective only by virtue of some law existing or to be passed in the several States of this Union. The State of Iowa may have one law, the State of Kansas may have another law, and the State of Maryland another law, and so on through all the forty-odd States of this Union. Those States may have different laws. They may provide the machinery by which these goods are to be taken hold of when they reach the border line; but those goods when they reach the border line and before delivery are articles of interstate commerce, and any law which says that the State may interfere with those articles of commerce is unconstitutional, because the Supreme Court has said so in the Rhodes case.

As I said at the last session of these hearings, in the few moments

in which I addressed the committee, the only possible way in which the Congress could legislate against the traffic in alcoholic liquors is by the passage of an act of Congress in which the Congress would say that for the benefit of the entire people of this country and for the benefit of the people of the States the traffic in alcoholic liquors ought to be prohibited, and that the Congress would say with regard to liquors, as the Congress said in regard to lottery tickets—exactly as they said of lottery tickets—that for the good of the entire people they would prohibit the traffic in alcoholic liquors. That is not the bill that is pending here. The bill which is pending here is to give the several States the power to do this.

Now, Mr. Chairman and gentlemen, what has been the suggestion made by our friends? They have said that in Iowa—Judge Smith laid great emphasis upon that—there was no law upon the statute book which allowed the State of Iowa to take hold of these goods which were shipped there for purposes of consumption. Who was to pass upon the question as to whether the goods were for sale or whether the goods were for consumption before those goods had been delivered? If the State of Iowa had the right to appoint an officer, if the State of Iowa had the right to select some commissioner to go upon the border line and to take hold of those goods in the express car or at the station of one of the railroad companies, who was to decide as to whether those goods had been shipped to the consignee bona fide—for consumption or for purposes of sale?

That was giving to the State the power to say as to these interstate commerce shipments, whether they were for sale or whether they were for purposes of consumption. In this case of *Rhodes v. Iowa* the court made it perfectly plain as to the intention of the Supreme Court on the question of when the interstate commerce ceased, and wherein it commenced.

The sole question presented for consideration is whether the statute of the State of Iowa can be held to apply to the box in question while it was in transit from its point of shipment—Dallas, Ill.—to its delivery to the consignee at the point to which it was consigned—that is to say, whether the law of the State of Iowa can be made to apply to a shipment from the State of Illinois, before the arrival and delivery of the merchandise, without causing the Iowa law to be repugnant to the Constitution of the United States.

Then they go on to cite the statute of the State of Iowa, and they come down to this question: Has the law of Iowa any extraterritorial force which does not belong to the State of Illinois? If the law of Iowa forbids the delivery and the law of Illinois requires the transportation, which of the two shall prevail? How can the former make void the latter? In view of this necessary operation of the law of Iowa, if it be valid, the language of the court in the case of *Vance v. Vandercook* is exactly in point. It was said there:

We think it might be safely said that State legislation which seeks to impose a direct burden upon interstate commerce or to interfere directly with its freedom does encroach upon the exclusive power of Congress.

What else can it mean? The language is “State legislation which seeks to impose a direct burden upon interstate commerce.” Is it not a burden upon interstate commerce to say that while that interstate commerce is going on, before the interstate commerce has ceased, some officer of any State in this Union can lay hands upon that interstate shipment and pass judgment upon the question as to whether or not

that shipment is made in good faith to the purchaser for the purposes of sale or for the purposes of consumption?

Is the officer in the State of Iowa to pass judgment upon the question as to whether or not that shipment is made in good faith to the purchaser for the purposes of sale or for the purposes of consumption? Is the officer in the State of Iowa to pass judgment upon a sale which is made in the State of New York while that interstate-commerce shipment continues and before the interstate-commerce shipment ends; and is he to say—is the State to say—while the interstate commerce is going on whether or not that shipment is made in good faith or whether it is made in bad faith, and what is to become of it?

The only argument offered for this bill is that it is necessary in order to give to the several States of this Union the right to regulate their own internal affairs in the question of liquors. That was the burden of the report which this honorable committee made at the last session of Congress. It was the statement which was made upon the floor of Congress by the advocates of this bill, in which they said "Allow the several States of this Union to control their own internal affairs in the matter of the liquor traffic."

Now, whether or not those goods are sold to a man in a prohibition State for purposes of resale or for purposes of consumption matters not. It remains a fact that as soon as the goods reach their ultimate destination, then the State law attaches. Is Congress tying the hands of the several States? Is there anything in any act of Congress which takes away from the several States of this Union the right to control their own affairs in the liquor traffic? As soon as those goods get into the hands of the consignee, does not the State law take hold of them, and does not the State law treat those goods in exactly the same way as if those goods had been manufactured in a prohibition State? This is the whole question: The several States are asking Congress, you are told, to allow them to control, so far as the liquor traffic is concerned, their own internal affairs.

Is there any other point involved? And yet the Supreme Court said in the Rhodes and the *Vance v. Vandercook* cases that just as soon as those goods get into the hands of the man who has purchased them, then the State law applies and they are to be governed by the law of that State; but the temperance folk deny this.

You may read a temperance paper, you may read the New Voice, you may read all the arguments of our learned friends, and they begin with this proposition of enabling the States to control their own internal affairs, and they end with the same thought. If the Supreme Court has said anything it has said in the Rhodes case, and it has said in the *Vance v. Vandercook* case, that the laws of the several States are complete in the control over those goods just as soon as they reach the State, and they say that in reaching the State they must reach the hands of the consignee; and I submit that the States can ask for no more.

Mr. SMITH, of Kentucky. Can you answer this question? Why can not Congress say as to the liquor traffic that as soon as any of these goods reach within the State, across the border of the State, they shall cease to be articles of interstate commerce?

Mr. CRAIN. Because the Constitution prohibits it, and the Supreme Court says so. That is the best reason I know of, on earth.

Mr. SMITH, of Kentucky. I understand.

Mr. CRAIN. Yes, sir; the Supreme Court says that the interstate

commerce continues until the delivery reaches the hands of the consignee.

Mr. SMITH, of Kentucky. If Congress has power to regulate that, why can they not regulate it by saying that as soon as whisky or beer goes into one of these States it shall be eliminated from the list of articles subject to interstate commerce?

Mr. CRAIN. That might be so if the Supreme Court had not decided as it has. But the Supreme Court has decided that you can not say that the State may take hold of these goods before they reach the consignee. In other words, the Supreme Court has said that Congress has no right to relinquish or delegate its power over interstate commerce. The Supreme Court says, "You can not do that." It says you can not say "I will give up these goods when they get to the border line."

Mr. SMITH, of Kentucky. Has not Congress the power to say when the control of Congress shall cease?

Mr. CRAIN. Not at all. The Supreme Court has said where interstate commerce ceases and where it begins.

Mr. BRANTLEY. Can there be any such thing as interstate commerce unless the articles pass from one State to another?

Mr. CRAIN. Absolutely not.

Mr. BRANTLEY. Then if this be left to the State where it starts, there is no interstate commerce at all?

Mr. HENRY, of Texas. You and Judge Hough and the other attorneys who have argued this case speak of this law as delegating authority to the States. Now, Chief Justice Fuller, in deciding the Rahrer case, discussing the Wilson Act, uses this language:

Congress did not use terms of permission to the State to act, but simply removed an impediment in the enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction.

Mr. CRAIN. That is exactly right; and I think that was just as sane a decision as could have been rendered. Here was the fiction: That because these goods were in an original package, that remaining in the original package they could be sold, and the State law could be superseded by reason of the fact that these packages, coming from some other State and being in original packages, they had some peculiar advantages.

Mr. SMITH, of Kentucky. They construed that to be a part of interstate commerce?

Mr. CRAIN. Yes; they said it was an incident of interstate commerce.

Mr. SMITH, of Kentucky. If they could cut off the right of sale—

Mr. CRAIN. They did not cut off the right of sale.

Mr. SMITH, of Kentucky. They said that Congress could.

Mr. CRAIN. Here is what they said: They said there was no reason why these goods coming from some other State and being in the original package should stand on a different footing from goods manufactured in the State and not being in the original package. They took away that fiction which the original-package decision created. And they said to the State, We will not tie your hands because they are in the original package, but we will destroy that and wipe it out, and then when these goods get into the hands of the consignees you deal with them in the same way as though they were not goods that had been sent from the outside of the State at all.

Mr. HENRY, of Texas. You are not arguing that the Wilson law was unconstitutional?

Mr. CRAIN. No, sir; I never argue that the Supreme Court makes a mistake. Sometimes I may think so, but I never argue that way.

Mr. HENRY, of Texas. I have listened to all the arguments carefully, and I can not draw the distinction, really, between the Wilson law and this present law.

Mr. CRAIN. This law?

Mr. HENRY, of Texas. Yes, sir. This is more of a legislative construction of the Wilson Act of 1890—an interpretation of it—than it is new legislation.

Mr. CRAIN. That is very much better than I could have expressed it. This is asking Congress to say that the Supreme Court did not decide exactly as our prohibition friends would have liked the Supreme Court to decide, and they are asking you to instruct the Supreme Court to decide according to their liking.

Mr. HENRY, of Texas. Now then, are they asking us to go any further than Congress went in 1890? That is a serious question in my mind.

Mr. CRAIN. Of course they are. They are asking you to delegate to the several States the authority to stop interstate commerce.

Mr. HENRY, of Texas. Why "delegate" any more in this case than in the act of 1890?

Mr. CRAIN. Because the Supreme Court said in that case that they could not, under the Wilson bill, get hold of or lay hands on the interstate commerce shipments before the shipments reached the hands of the consignee. Now, our friends say, "we do not like that decision of the Supreme Court, and we want you to permit us to go out on the border line of the State, and as soon as a freight train or an express car comes along with these interstate shipments we want you to give to the State the power to take hold of these goods before they reach the men who purchased them.

Mr. HENRY, of Texas. That is it exactly.

Mr. CRAIN. Now, that is their—

Mr. HENRY, of Texas. That is their idea?

Mr. CRAIN. Yes. Now, you can not do that, because that is delegating to the several States the right to interfere with interstate commerce, and the Supreme Court said in the Rhodes case, and in the case of *Gibbons v. Ogden*, Chief Justice Marshall said, that the power over interstate commerce was an exclusive power existing in Congress; and they decided in the lottery case that Congress had a right to stop interstate commerce; that Congress had a right to destroy interstate commerce in articles which, in the judgment of Congress, were of such a character as to be destructive of the morals and the health and the good order of the community.

I made a proposition to this committee at the last hearing, which I repeat now, that if our friends will introduce a bill into Congress prohibiting—Congress prohibiting, now, not the State, but Congress prohibiting—traffic in alcoholic liquors, I do not think that this committee will again be worried by the presence of Judge Hough or myself. But that is not the proposition, that the Congress shall do this with interstate commerce, but that you shall go to the—

Mr. DE ARMOND. I do not understand that yourself and Judge Hough would be supporting the bill you refer to?

Mr. CRAIN. If we did, Congress would tell us we are wasting our time.

Congress stated with great boldness that interstate commerce must cease in lottery tickets. They did not have any "if" about that; and the Supreme Court said that lottery tickets were subjects of interstate commerce, and that the Congress had acted all right. Now, if our friends think that liquor and beer are such vicious and poisonous articles, why do they not have the courage to come and ask Congress to deal with them in an open and frank way? But they saw a loophole, they thought. They saw the stars twinkling in the heavens, so far as the Wilson bill was concerned; and by the silent light of the moon they went to work—if I may be permitted to say it—they went to work to hoodwink Congress.

Mr. HENRY, of Texas. You have frequently referred to the power of Congress over interstate commerce as being exclusive.

Mr. CRAIN. That is what these cases say.

Mr. HENRY, of Texas. There are a great many decisions holding that it is concurrent with that of the States.

Mr. CRAIN. I know, but this Northern Securities case says that it is an exclusive power, and it quotes the case of *Gibbons v. Ogden* to substantiate that.

Mr. HENRY, of Texas. That is mere obiter in this case so far as that opinion goes. There have been cases where they held that the power of the States was concurrent with that of Congress, and that wherever Congress by its silence did not act then the States might act.

Mr. CRAIN. And they have said in this case in the plainest language that it is an exclusive power, and Mr. Justice White—and his opinion is concurred in by the other three judges who dissented—gave the same opinion. So that we have the statement by the nine judges of the Supreme Court that the power of interstate commerce is an exclusive power in Congress. But I agree with you that for a long time after several of the cases, and perhaps for thirty years, that question was an open question, as to whether or not it was an exclusive power or whether it was shared by the State. But it is no longer, since these decisions, an open question, in my judgment.

The court said in the case of *Vance v. Vandercook*:

But the right of persons in one State to ship liquors into another State to a resident of that other State for his own use is derived from the Constitution of the United States and does not rest on the grant of the State law. Either the conditions attached by the State law unlawfully restrain the right or they do not. If they do—and we will hereafter examine this contention—they are void.

Mr. DINWIDDIE. Can I ask you a question?

Mr. CRAIN. Certainly.

Mr. DINWIDDIE. That is *Vance v. Vandercook*?

Mr. CRAIN. Yes, sir.

Mr. DINWIDDIE. What do you think would be the effect on the State of Iowa if this bill should pass and the Iowa law should remain?

Mr. CRAIN. My judgment is that there is no use in talking about that.

Mr. DINWIDDIE. We have been talking about it.

Mr. CRAIN. If the legislature of Iowa was not already in session, taking for granted that the sentiment that I hear here expressed about Kansas and Iowa is the true sentiment, the governor would immedi-

ately call the legislature together, and they would pass a law which would say that the officers of Iowa could go upon the border lines of the State and should become inspection officers, as to whether or not these goods were shipped for the purposes of consumption or whether they were shipped for the purposes of sale. And just think of the absurdity of that problem. Here are gentlemen who believe—taking them at their own word, and I never have any desire to question that—that the liquor traffic is an immoral thing; that it is hurtful to the health and good order and morals of society.

Mr. DINWIDDIE. That is what the Supreme Court says.

Mr. CRAIN. No, sir; the Supreme Court have never said so. Now, when a man has that belief, how long does it take him to stretch his conscience to suit the exigencies of the case? Suppose my learned friend here should have a friend of his own way of thinking in the State of Iowa—and I suppose there are a great many of them there—and suppose he should have some friend who is appointed to go upon the platforms of stations and into the express cars to determine as to whether or not these goods were shipped in good faith for the purposes of consumption or for the purposes of sale. I think we may reasonably assume that that man, acting according to his conscience, would say, "I am going to protect my neighbor, and I am going to see that his morals are not destroyed, and I will take care to say that these goods were shipped to that gentleman for the purposes of sale and not for the purposes of consumption."

And so it is exactly—I think I have said it before—like placing a poor innocent pigeon or broiling chicken into the power or keeping of one of these chicken hawks, and you know what he would do with them. It is the same thing exactly.

With the State of Kansas—and we do not hear anything in this discussion but the State of Kansas and the State of Iowa—

Mr. DINWIDDIE. Oh, yes; there are many others.

Mr. CRAIN. I say that if you pass this law—

Mr. DE ARMOND. I do not quite catch one distinction. In the lottery case it is held that Congress has absolute power over this matter, and also in the Northern Securities case, in the original holding, that the sale in the first place was an incident.

Mr. CRAIN. Yes, sir.

Mr. DE ARMOND. Now, if it is held that Congress has the power to destroy in the one instance and the power to curtail the right of sale, why has not Congress the power to limit it on its entrance?

Mr. CRAIN. I have never suggested that Congress has not the power to decide whether these goods are for the purpose of sale or consumption. I say that the Supreme Court of the United States has decided in the lottery case, and it is now the settled law, that under the power to regulate Congress has the power to destroy; but it is to destroy when, and to destroy what? To destroy interstate shipments when those shipments are against, are hurtful to the morals, the health, and good order of society. That is the only reason for the exercise of that power. I made the suggestion that if the Congress had the courage to say that so far as malted liquors were concerned they stood upon the same footing as lottery tickets, then a bill introduced into Congress which prohibited the transportation of malted liquors from one State to the other would be the best way to test the good faith of Congress

as to the position which it occupied on account of these malted liquors, as to which they have been in partnership with the Government of the United States for the last sixty years.

Mr. DE ARMOND. If Congress decides that these articles are detrimental to public health—

Mr. CRAIN. And morals.

Mr. DE ARMOND. And morals, and so on—

Mr. CRAIN. Yes, sir.

Mr. DE ARMOND (continuing). Why can they not say that they shall not be shipped into the State except on condition that they become subject to the State law?

Mr. CRAIN. Because the Supreme Court has said it can not be. Because the Supreme Court has said that while Congress has absolute and full power over these interstate shipments, that power can not be delegated to the States of the Union.

Mr. DE ARMOND. We do not delegate it. We say it shall terminate the interstate character when it reaches the State line.

Mr. CRAIN. I know, but the Supreme Court said that it terminated when it took place; that the termination never took place until it reached the hands of the consignee.

Mr. DE ARMOND. That was in the absence of Congressional legislation.

Mr. CRAIN. I know; but the Wilson bill would have been knocked into 40 cocked hats by the Supreme Court if it had not been for the loophole which the Supreme Court took advantage of to get out of holding that bill unconstitutional.

Mr. DE ARMOND. I confess that it is an intimation.

Mr. CRAIN. It is an intimation. It is a certainty. The Supreme Court said, "We will not say that the Wilson bill is unconstitutional." Why? You say that the Wilson bill is unconstitutional because it interferes with interstate commerce. The Supreme Court said, "I do not agree with you. It does not interfere with the interstate commerce because the commerce does not cease until it reaches the hands of the consignee." That is what we argued. The Supreme Court said, "You are wrong. The interstate commerce does not cease until it reaches the hands of the consignee."

Mr. DE ARMOND. In the original holding that the sale was a part of the interstate commerce—

Mr. CRAIN. Yes.

Mr. DE ARMOND (continuing). And the regulation of commerce, the cutting of that off, was conceded—

Mr. CRAIN. Yes.

Mr. DE ARMOND (continuing). If that was consistent, why can you not go another step?

Mr. CRAIN. Congress said, "There is no reason why these original packages should give to the articles contained a specious value."

Mr. DE ARMOND. It was not an incident to the interstate commerce?

Mr. CRAIN. Why, of course not.

Mr. SMITH, of Kentucky. Did you state that the decision did not hold that the sale of interstate commerce was only an incident to it, and Congress in cutting off the sale did not cut off the incident?

Mr. CRAIN. It cut off the right of sale on the original package.

Mr. SMITH, of Kentucky. It only cut off the incident, and cut out no part of the rights attaching underneath the interstate-commerce law?

Mr. CRAIN. Now, what did the learned judge say in the case of *Vance v. Vandercook*? This is the way the court dealt with that. He said:

I am altogether unwilling to attribute to Congress an intention to abandon the protection of interstate commerce in articles of food or drink, whether for personal use or for sale.

The CHAIRMAN. That was in the dissenting opinion?

Mr. CRAIN. Yes, sir; that was in the dissenting opinion.

Mr. SMITH, of Kentucky. That language rather imports that Congress can abandon that if they want to?

Mr. CRAIN. I do not think so at all.

The CHAIRMAN. That was the point that the court differed on in that case.

Mr. HENRY, of Texas. This is a dissenting opinion.

Mr. SMITH, of Kentucky. I know it is. That language intimates that.

Mr. CRAIN. Gentlemen, I might extend these remarks, but as I told my friend, Mr. Dinwiddie, on the other side, that I would not exceed a certain time I will stop here.

STATEMENT OF HON. J. A. KELIHER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS.

Mr. Chairman and gentlemen of the committee, responding to a request from the leading merchants from the city of Boston, which city in part I have the honor to represent here, I come before you to urge their protest against the passage of this bill.

That there is no general substantial demand for the bill must be apparent to all. The voice that is raised in behalf of it is the voice that you are ever listening to; the voice that keeps up an interminable wail and dinning in your ears; a voice that you can never satisfy by legislation. Pass this legislation to-day and they will be here to-morrow asking for more.

It is the voice of an active few who arrogate to themselves the right of censorship—moral and social censorship—of the community. They are in their own belief the self-appointed keepers of the consciences of their fellow-beings. They are sincere and they are active—as you can see—and energetic and untiring, but they use very little judgment. I repeat, they will be here to-morrow for more. They can not sacrifice their agitation; they exist and live upon it, and it is their very life.

I come from the State of Massachusetts, and we have had considerable experience along this line there. We gave them prohibition—the State did—and after that became a farce, by an overwhelming vote it was rejected, after we had proved that prohibition did not prohibit.

Notwithstanding that the State has spoken on that question, three-fourths of the time of our legislature is consumed with the consideration of such matters. They have told us, "You give us such and such a law and we will be appeased," and we have given them law after law, and still they come before the legislature asking for more. We gave them a local-option law. They make Boston, my city, the particular object of attack. We gave them the 11 o'clock law, the screen law, the local option and no bar law, the table law, the antiproximity to schools law, and still they are at our legislative doors crying for more

legislation, and still you can not satisfy them. That has been our experience in Massachusetts, and that will be the experience of Congress.

They are honest in their belief, but they are misguided. They will not cease coming here. They ask extraordinary legislation from Congress. They ask you to go into the State and prohibit the working of the interstate law. And I repeat, Mr. Chairman, on behalf of a number of estimable gentlemen of the highest business standing in my community, that I am here to voice in these very few words my opposition to the passage of this law.

Mr. BARTHOLDT. During the hearing to-day, Mr. Chairman, about four or five members of the House have appeared before the committee, but they did not care to interrupt the learned argument of counsel, and they have asked me to prefer their desire to the committee to be heard at a future day. There are altogether twenty members who desire to be heard on behalf of their constituents, and I would like to know if the committee would hear them to-day or to-morrow.

The CHAIRMAN. The committee could not extend the time in that way now.

Mr. BARTHOLDT. They are absent to-day owing to the fact that they had not been notified. I have not notified them because I am not an agitator in this connection; I merely represent my own constituents. These gentlemen will be here to-morrow.

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